

EXHIBIT 3



Deposition of:
Jeffrey Sedlik

November 13, 2019

In the Matter of:

**Brittney Gobble Photographer, LLC
Vs. Sinclair Broadcast Group, Inc., Et
Al.**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

BRITTNEY GOBBLE PHOTOGRAPHY, LLC)
PLAINTIFF,)
V.) Case No.
SINCLAIR BROADCAST GROUP, INC.,) 1:18-CV-03403-RDB
ET AL) (Consolidated cases,
lead case)
DEFENDANT/THIRD-PARTY) Case No.
PLAINTIFF,) 1:18-CV-03384-RDB
V.) (Consolidated case)
USA ENTERTAINMENT NEWS, INC.,) Case No.
D/B/A "WENN" AND "WORLD) 1:19-CV-00599-RDB
ENTERTAINMENT NEWS NETWORK") (Consolidated case)
THIRD-PARTY DEFENDANT) Case No.
(Consolidated case)

VIDEOTAPED DEPOSITION OF:

EXPERT JEFFREY SEDLIK

WEDNESDAY, NOVEMBER 13, 2019

10:07 A.M.

Reported by: PAULA A. PYBURN
CSR 7304, RPR, CLR

1 VIDEOTAPED DEPOSITION OF EXPERT JEFFREY
2 SEDLIK, the witness, taken on behalf of DEFENDANTS,
3 on Wednesday, November 13, 2019, 10:07 a.m., at
4 333 South Hope Street, Suite 2610, Los Angeles,
5 California, before PAULA A. PYBURN, CSR 7304, RPR,
6 CLR.

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9 APPEARANCES OF COUNSEL:

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11 FOR PLAINTIFF:

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1 APPEARANCES: (CONTINUED)

2
3 ALSO PRESENT:

4 Ellen C. Boughn

5 Ron Lazo, Videographer
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I N D E X

| WITNESS | EXAMINATION | PAGE |
|-----------------------|-------------|------|
| EXPERT JEFFREY SEDLIK | | |
| (BY MR. MARDER) | | 8 |

E X H I B I T S

| NO. | PAGE | DESCRIPTION |
|-----------|------|---|
| Exhibit 1 | 12 | Notice of Videotaped Deposition of Jeffrey Sedlik |
| Exhibit 2 | 12 | Curriculum Vitae |
| Exhibit 3 | 14 | Folder Containing Reports and Other Reference Documents |
| Exhibit 4 | 14 | Work File |
| Exhibit 5 | 35 | 2015 Form 990-EZ |
| Exhibit 6 | 39 | 2016 Form 990-EZ |
| Exhibit 7 | 43 | 2017 Form 990-EZ |
| Exhibit 8 | 80 | 4/12/19 Preliminary Expert Report of Professor Jeffrey Sedlik |
| Exhibit 9 | 80 | 6/21/19 Surrebuttal Expert Report of Professor Jeffrey Sedlik |

E X H I B I T S (CONTINUED)

| NO. | PAGE | DESCRIPTION |
|------------|------|---|
| Exhibit 10 | 82 | 4/12/19 Exhibits to Preliminary Report of Professor Jeffrey Sedlik Jeffrey Sedlik |
| Exhibit 11 | 98 | Printout from ALM Experts |
| Exhibit 12 | 100 | Printout from www.photographyexpertwitness.com |
| Exhibit 13 | 101 | Printout from expertpages.com |
| Exhibit 14 | 105 | Printout from professorjeffsedlik.com |
| Exhibit 15 | 107 | LinkedIn profile |
| Exhibit 16 | 198 | Exhibit H to Expert Report |
| Exhibit 17 | 198 | Exhibit I to Expert Report |
| Exhibit 18 | 199 | Exhibit A to Expert Report |
| Exhibit 19 | 265 | Exhibit M to Expert Report |
| Exhibit 20 | 265 | Exhibit L to Expert Report |
| Exhibit 21 | 265 | Exhibit E to Expert Report |
| Exhibit 22 | 265 | Exhibit G to Expert Report |
| Exhibit 23 | 265 | Exhibit F to Expert Report |
| Exhibit 24 | 290 | Exhibit B to Expert Report |

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UNANSWERED QUESTIONS

(None)

INFORMATION REQUESTED

(None)

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY,

2 NOVEMBER 13, 2019

3 10:07 A.M.

4 * * *

5 THE VIDEOGRAPHER: We're now on the record.
6 The time is 10:07 a.m. on November 13th, 2019. This
7 is Media Unit 1 of the video recorded deposition of
8 Jeffrey Sedlik, taken by counsel for the defendant
9 in the matter of "Brittney Gobble Photographer
10 [verbatim] v. Sinclair Broadcast Group, et al.,"
11 filed in the United States District Court. The case
12 number is 1:18-CV-03403-RDB.

13 This deposition is being held at Glaser
14 Weil, located at 333 South Hope Street, Suite 2610,
15 Los Angeles, California 90071.

16 The court reporter is Paula Pyburn from
17 Veritext.

18 Videographer is Ron Lazo of Veritext.

19 Counsel, please state your appearances and
20 affiliations for the record.

21 MR. ALLEN: Robert Allen, Glaser Weil, for
22 Plaintiff Brittney Gobble Photography, LLC.

23 MR. MARDER: Scott Marder on behalf of all
24 of the defendants with the law firm of Thomas &
25 Libowitz.

1 THE VIDEOGRAPHER: Would all those in
2 attendance please announce themselves for the
3 record.

4 MS. BOUGHN: Ellen Boughn.

5 THE VIDEOGRAPHER: Will the court reporter
6 please swear in the witness.

7 THE REPORTER: Raise your right hand,
8 please.

9 Do you solemnly swear the testimony you are
10 about to give in this deposition shall be the truth,
11 the whole truth, and nothing but the truth?

12 THE WITNESS: I do.

13 THE VIDEOGRAPHER: Please begin.

14 * * *

15 EXAMINATION

16 BY MR. MARDER:

17 Q Good morning, sir.

18 A Good morning, Counselor.

19 Q Can you tell us your full name.

20 A Jeffrey, J-e-f-f-r-e-y, Brian, B-r-i-a-n,
21 Sedlik, S-e-d-l-i-k, professor.

22 Q Now, professor is not part of your name, is
23 it?

24 A No. That's my title.

25 Q Got it. And we'll talk about that more in

1 a little bit.

2 A Gladly.

3 Q I know that you have given a number of
4 depositions over the years, but nonetheless I wanted
5 to review some guidelines as to how we will do the
6 deposition today to try to make it easier for you
7 and so we can move through things quickly and
8 smoothly.

9 Fair enough?

10 A Certainly.

11 Q All right. In a little bit I'll be asking
12 you questions. If you don't understand any of my
13 questions, please let me know; I will be happy to
14 repeat the question or rephrase the question or do
15 whatever I have to do to make sure you understand
16 it.

17 Is that fair?

18 A Yes, sir.

19 Q And if you do give me an answer to a
20 question without asking for clarification, then I
21 will assume you understood what it meant.

22 Is that fair?

23 A Yes.

24 Q All right. As you see, we have a court
25 reporter taking down everything we say. And

1 although she's very good, she has a few limitations,
2 one of which is she can only take down verbal
3 responses. So we have to make sure we don't nod our
4 head or shake our head when we mean "yes" or "no."

5 Okay?

6 A Yes.

7 Q Also, when we talk casually, sometimes we
8 say "uh-huh" or "huh-uh." Unfortunately, when those
9 are typed up, it's not clear whether you meant "yes"
10 or "no"; so please use the words "yes" or "no."

11 Okay?

12 A Yes.

13 Q Lastly, the court reporter can only take
14 down one voice at a time. So I will do my best to
15 wait till you have finished your answer before I ask
16 my next question. And if you could kindly do the
17 same thing, wait for your answer until I have
18 finished my question, that will help.

19 A Absolutely. I do have one request of you.

20 Q Go ahead.

21 A I have a deep vein thrombosis issue; so I
22 need to get up about every hour or so, just walk
23 around the room. I can sit back down.

24 Q No problem.

25 A Not take any risks there.

1 And also, if I'm asked a question where it
2 requires some thought and I pause, it doesn't mean I
3 don't know the answer or that I'm being evasive.
4 I'm thinking about my answer so that I can give you
5 a full, complete, and accurate answer before I
6 speak.

7 Q Understood. And the breaks won't be a
8 problem.

9 A Okay.

10 Q Last point in terms of guidelines and
11 instructions. Today I'll be asking you some
12 questions about some of your work. So I want to
13 make clear that in asking the questions only about
14 certain parts of your work, you should not interpret
15 anything that I'm doing today or saying today as
16 endorsement of any other parts of your work.

17 Do you understand?

18 A Understand.

19 MR. MARDER: Let's go ahead and mark these
20 two, please. It's the notice. Let's mark them.

21 THE REPORTER: 1 and 2?

22 MR. MARDER: Yeah. 1 is on the top and 2
23 is below it.

24 MR. ALLEN: Do I have 2?

25 MR. MARDER: No. That was one of his

1 exhibits --

2 MR. ALLEN: Okay.

3 MR. MARDER: -- so I don't have copies.

4 No. 2 will be Exhibit A, which is his CV.

5 MR. ALLEN: Great. Thank you.

6 (Whereupon, Defendants' Exhibit 1
7 and Defendants' Exhibit 2 were
8 marked for identification by the
9 Court Reporter.)

10 BY MR. MARDER:

11 Q Sir, you have in front of you what has been
12 marked as Exhibit No. 1 for purposes of this
13 deposition.

14 Do you see that?

15 A Yes.

16 Q Now, that is the notice of taking
17 videotaped deposition in this case; is that right?

18 A Yes, sir.

19 Q Were you provided with a copy of this prior
20 to today?

21 A I'm not sure, but there may have been
22 additional pages in the notice that I received.

23 Q The notice that you received, would that be
24 in your file that you brought with you today?

25 A Yes.

1 Q Were you asked by counsel to bring a copy
2 of your entire file related to this case today?

3 A I received a copy of the notice, which
4 asked me to bring my file.

5 Q And did you do that?

6 A I did.

7 Q Now, prior to the start of the deposition,
8 you handed me two manila folders, which I have in
9 front of me.

10 And what are those manila folders which
11 we'll mark in a moment?

12 A One of those manila folders is a copy of my
13 file which has my invoices and some communications.

14 And then the other is -- has copies of my
15 two reports without the exhibits and maybe three
16 additional documents to refresh my memory if asked,
17 such as the -- a list of the exhibits to my report
18 so that I can quickly reference that and not cause
19 delay in the deposition process.

20 Q Fair enough.

21 And then you also have in front of you what
22 has been marked as Exhibit No. 2.

23 Do you see that?

24 A Yes, sir.

25 Q Do you recognize Exhibit No. 2?

1 A Yes. It appears to be my curriculum vitae.
2 Just checking through it.

3 Looks to be a complete copy of my
4 curriculum vitae as was attached to my preliminary
5 expert report.

6 Q Now, I'm going to have the court reporter
7 mark the two folders that you brought as Exhibits 3
8 and 4. The thicker one should be Exhibit 3, and the
9 thinner one should be Exhibit 4.

10 MR. ALLEN: Just so we're clear, the
11 thicker one is which one?

12 MR. MARDER: I'll have him identify it on
13 the record.

14 (Whereupon, Defendants' Exhibit 3
15 and Defendants' Exhibit 4 were
16 marked for identification by the
17 Court Reporter.)

18 BY MR. MARDER:

19 Q Sir, I'm handing you the folder that has
20 been marked Exhibit 3.

21 Can you identify that for us, please?

22 A It's a folder that I brought with me today.
23 Prior to coming here I printed out a copy of my
24 preliminary report; my surrebuttal report; the index
25 to exhibits, which is also included in the report; a

1 section of my report that outlines the tables in
2 case I'm asked about the tables; and then a
3 termination notice from WENN; and a list of the
4 assumptions, which is also -- a copy of which is in
5 my report.

6 Q Please take a look at Exhibit No. 4.

7 What is Exhibit No. 4?

8 A Exhibit No. 4 is a copy of my file. It has
9 the invoices that I have submitted in the matter.
10 It has my engagement agreement and two letters from
11 your firm, and one confidential document that I
12 don't know that I'm -- that I should discuss here
13 without you having to call it confidential and then
14 it has to get excerpted. So --

15 Q You can go ahead and identify it for me,
16 please.

17 A It's a list of the revenue generated --
18 from what I understand from the testimony to be the
19 revenue generated by advertising placed on the
20 websites, the television station websites that are
21 Sinclair television stations.

22 And I'll answer any -- in further detail as
23 you ask questions about it.

24 MR. ALLEN: I believe that that's
25 Exhibit 37 from -- Plaintiff's Exhibit 37 from the

1 depositions.

2 BY MR. MARDER:

3 Q You can go ahead and put those papers back
4 in the folder that's Exhibit 4.

5 Now, if I can just ask you, let's do our
6 best to try to not mix up the papers that are in
7 Exhibit 4 with those that are in Exhibit 3 and vice
8 versa. So we'll try to --

9 A Certainly.

10 Q -- do our best between the two of us.

11 Fair enough?

12 A Yes, sir.

13 Q All right. Now, if you can -- excuse me.
14 If you can now get Exhibit No. 2 in front of you,
15 which is your CV. Please feel free to refer to
16 Exhibit 2 at any time during the period when I'm
17 going to be asking you questions about your
18 background and your -- your experience if you need
19 to.

20 A Certainly.

21 Q Okay. All right.

22 Now, you mentioned at the beginning that
23 your title is professor? Did I hear you correctly?

24 A Yes.

25 Q Professor where?

1 A At the ArtCenter College of Design.

2 Q What is the ArtCenter College of Design?

3 A It is a college at which design is taught.

4 It goes back to the 1920s, I believe. I've been
5 teaching there approximately 25 years. I was voted
6 by the administration to receive the professor title
7 15 years ago.

8 The type of subject matter taught there is
9 photography, illustration, transportation design,
10 environmental design, fine arts, and other -- other
11 types of topics.

12 Q Are you a full-time professor at the
13 school?

14 A No. I'm employed elsewhere.

15 Q Do you know what tenure means?

16 A Yes.

17 Q Are you a tenured professor at the school?

18 A They do not have tenure at the ArtCenter
19 College of Design.

20 Q I see. Are you familiar with the term
21 "adjunct professor"?

22 A Yes, sir.

23 Q What does that mean?

24 A At the ArtCenter College of Design, all --
25 all or the vast majority of the educators are

1 adjunct faculty. It's a school known for people
2 with real-world experience who are experts in their
3 field coming in and teaching. Instead of being
4 full-time educators, they take their experience in
5 the field and bring it to the students, and that's
6 what "adjunct" means.

7 Q Are you an adjunct professor at the school?

8 A I am, sir.

9 Q Understood.

10 How long have you been an adjunct professor
11 at the school?

12 A I earlier testified approximately 15 years,
13 and that is -- some -- I need you to give me some
14 wiggle room there, because I didn't look it up. But
15 I have been teaching there for 24 to 25 years.

16 Q And is your current position there a paid
17 position?

18 A Yes.

19 Q I want to get a little bit of an
20 understanding about the kinds of courses that you
21 teach now and that you've taught in the past. So
22 right now it is November 13th, 2019.

23 So I would assume that's the fall semester
24 at the school; is that correct?

25 A It is. They're wrapping up and I'm not

1 teaching this term; I'm teaching in the spring. And
2 I will be teaching a class on copyright law,
3 licensing practice, pricing, negotiations, copyright
4 registration practice. I think I said negotiations.
5 Those -- that's the primary subject matter.
6 Estimating, invoicing, negotiations, and some
7 business administration, but primarily it's -- it's
8 a copyright class.

9 Q Have you ever taught that course before?

10 A I've taught the course many times. It's a
11 recurring course.

12 Q Why are you not currently teaching this
13 semester?

14 A Because I'm employed by the -- the PLUS
15 Coalition, and I have several other business --
16 businesses operating, and I'm involved in many
17 nonprofit initiatives and on a number of boards.

18 I found that my travel schedule does not
19 permit me to teach every term. So I requested that
20 the school compact my class. In other words, it's a
21 trimester system, and I asked them to take all of my
22 students and put them into one semester so that I --
23 I can almost guarantee that I'll be there for the
24 one semester, and that allows me to cover all the
25 students in the -- in the photography department,

1 make sure that they get that education without me
2 having to fly back from England to teach a class and
3 fly to New York and fly back to teach a class the
4 next week and things like this that I have had to do
5 in the past that are expensive and that I have to
6 cover. But I'm very committed to education.

7 Q Not to mention jet lag is no fun.

8 A No. No.

9 Q When you say a "trimester," what are the
10 three semesters called?

11 A Winter, spring, fall?

12 Q Winter, spring, fall?

13 A I think so. I think so.

14 Q You're not sure?

15 A I don't do a lot of thinking about the
16 school administrative. I come in -- I come in, I
17 teach my class, and I leave. And I don't get
18 involved in -- I used to be more involved on
19 committees and things like that, but I have --
20 because of the scope of my other activities, I no
21 longer have time to focus on, let's say -- I
22 wouldn't call them extracurricular, but just
23 additional time that might need to be dedicated to
24 participate more fully in the school.

25 For example, I was on their copyright

1 committee and I had a bit of a more active mentoring
2 role outside of my classes. I've curtailed that
3 somewhat, although I do continue it.

4 So, in other words, to explain, my -- my
5 head is not in the administrative part of the school
6 anymore; so I don't even think about what the
7 semesters are called. I know there's a spring and
8 there's a winter; I think the other one is called
9 fall.

10 Q When were you last on the copyright
11 committee?

12 A Has to be six, seven years.

13 Q When was the last time you taught a course
14 at the school? And by "the school" I'm referring to
15 the ArtCenter of Design that you mentioned earlier?

16 A My last course was a year ago spring. I
17 teach every spring.

18 Q So then that would be spring of 2019 or
19 2018?

20 A I think 2018.

21 Q And just so I'm clear now, the last time
22 you taught at the ArtCenter of Design was in the
23 spring of 2018?

24 A That's right. And my upcoming class that
25 is confirmed begins in January.

1 Q What course did you teach in the spring of
2 2018?

3 A That course that I described earlier, which
4 was on the subject matter that I discussed earlier.

5 Q In 2017 did you teach a course at the
6 school?

7 A I'm sure I did.

8 Q And what was the course?

9 A Same course.

10 Q How about 2016?

11 A To my recollection, yes. I teach every
12 spring. And I switched from teaching every semester
13 to -- to once a year some years ago. Could be six,
14 seven, eight years by now; I'm not exactly certain.

15 Q So in 2016 what course did you teach?

16 A Same course.

17 Q How about 2015?

18 A It would be the same course.

19 Q How about 2014?

20 A Same course.

21 Q And then in 2013?

22 A I don't recall. I mean, it would -- I've
23 been teaching that same course for years and years.
24 And previous to that, I -- just to help you in your
25 line of questioning -- previous to that, I taught

1 Advanced Lighting course, and I found that teaching
2 two courses and with all the grading that was
3 associated with teaching Advanced Lighting was just
4 too much, given my positions at -- and my employment
5 by the PLUS Coalition and other activities.

6 So I asked them if I could replace myself
7 with another teacher in the lighting class and I
8 could focus on the copyright class since that's my
9 area of expertise. I mean, I'm also an expert in
10 lighting, but if I was going to teach one thing
11 there and bring a special scope of knowledge that
12 the other instructors may or may not have, that is
13 it.

14 And so, aside from that, I -- I teach
15 workshops on occasion to students who request --
16 request to participate in workshops. And I do that
17 periodically; the last one that I might have taught
18 would have been most likely two years ago.

19 And those could be focused on business.
20 Some of the students have a strong interest in -- in
21 things like protecting their copyrights, copyright
22 registration. They want additional -- more than
23 just the three weeks that I might spend on it in the
24 class, three or four weeks, they want additional
25 assistance. Or it might be lighting, or it might be

1 what have you. And so I do that on request.

2 And in addition I provide off-the-clock
3 consultation and mentoring to students, usually -- I
4 keep it to three hours a week, and that's every week
5 consistently if I'm in town. So I will accept -- if
6 students ask, they can come meet with me. If
7 they've ever been in my class in the last 25 years,
8 no matter what stage they are in in their career,
9 they can make a time with me and I will sit down
10 with them and counsel them on whatever -- whatever
11 issues they're facing.

12 Might be business strategy, it might be
13 self-doubt. You know, artists experience a lot of
14 issues and emotions. So I'll sit down with them.

15 And that's part of my community service, I
16 guess you could call it.

17 Q Now, the -- the course that you're teaching
18 in spring of 2020 that you mentioned earlier --

19 A Yes, sir.

20 Q -- is there a syllabus for that course?

21 A I don't know. I did get a message from the
22 college asking me to submit a syllabus, and usually
23 I ignore that message because I just don't have the
24 time. But I teach -- I guess -- the simple answer
25 would be there's likely a syllabus somewhere.

1 Q When was the last time that you gave a
2 student in that class a course syllabus?

3 A Never.

4 Q When was the last time that you gave the
5 school a course syllabus for that course?

6 A I don't recall when I gave the school -- I
7 mean, I testified earlier that I don't recall when
8 the last time is that I submitted a syllabus and
9 that I generally, with all due respect to the
10 school, don't create a syllabus. I -- but I -- I'm
11 glad to talk about what I actually teach there.

12 Q Is it a requirement of the school that you
13 actually submit a syllabus?

14 A I think it's a requirement of the
15 certification authority that governs colleges on --
16 that offer degree programs, that they have a
17 syllabus. So I suspect that they're using a
18 syllabus that I submitted at one time or another; I
19 do not recall when I submitted it.

20 Q You mentioned earlier that you work for an
21 organization that I think you called the PLUS
22 Coalition; is that correct?

23 A Yes, sir.

24 Q What is the PLUS Coalition?

25 A The PLUS Coalition is a 501(c)(6) nonprofit

1 organization, and the mission is to simplify and
2 facilitate the communication and management of image
3 rights. It's a coalition of all of the industries
4 involved in creating, distributing, using, and
5 preserving photographs.

6 For example, that would include advertising
7 agencies; design firms; publishers; museums;
8 libraries; creators, such as photographers and
9 illustrators; artist representers; and others who
10 have interest in that topic.

11 We have a board of directors -- I don't
12 know a count of it right now, but 7 to 12 people.
13 It's supposed to be around ten. And they -- each
14 seat in the organization -- each seat on the
15 directors board represents an industry sector. So
16 every industry sector has one vote in anything that
17 we consider and any action that we take.

18 Primarily we focus on the creation of
19 standards and guidelines for the communication of
20 image rights, both human to human and machine to
21 machine. As well, we are in a very long process of
22 creating a global registry of image rights
23 information.

24 Q Do you work full-time for the PLUS
25 Coalition?

1 A They consider me a full-time employee.

2 Q I don't understand. What does that mean?

3 A It means I have an employment contract with
4 them; it does not say part-time. I'm paid a salary.

5 I -- I'm sitting here right now on a
6 weekday; so I'm not working full-time for the PLUS
7 Coalition.

8 However, as we get into this, you'll see my
9 other business activities and directorships and my
10 board understands what I'm involved in and they
11 hired me with that understanding. But nobody said,
12 "We are hiring you part-time," put it that way. I
13 need to accomplish the goals that are set out for
14 me, and they're not concerned with how much time
15 I -- they don't have me clock in and out, let me put
16 it that way.

17 Q Let's just say for 2019 up to this point,
18 how much time on average each week do you spend
19 working on the PLUS Coalition or for the PLUS
20 Coalition?

21 A Last week -- at least 50 hours last week.
22 I tend to work 18 to 19 hours a day, seven days a
23 week, year in and year out.

24 Q I understand, but that wasn't really my
25 question.

1 My question was, during 2019, on average,
2 approximately how many hours do you work for the
3 PLUS Coalition?

4 A I don't compute that number. So "on
5 average" would require that I take the number of
6 days and the number of hours and divide them. And I
7 don't do that math and I don't track my time.

8 But I'm approximating -- I know how heavily
9 I worked last week; the week before I might have
10 been working on -- you know, as a volunteer on the
11 CASE Act with Congress. Or I might have been -- you
12 know, that kind of thing.

13 Last week was a particularly heavy week for
14 the PLUS Coalition.

15 Q On average, do you work more than ten hours
16 a week for the PLUS Coalition?

17 A Yes.

18 Q On average in 2019, is it more than
19 20 hours a week?

20 A Yes.

21 Q On average in 2019, did you work more than
22 30 hours a week for the PLUS Coalition?

23 A I would say that in the neighborhood of
24 30 hours could be the average. It's speculation; I
25 don't like to speculate in depositions. As I

1 mentioned before, I don't do the math.

2 So you're asking me more than, more than,
3 more than, and I want to give you accurate
4 testimony. I know I worked 40 hours --
5 approximately or more or -- or -- I worked a lot of
6 hours last week, and the previous -- the previous
7 week I worked less hours. But the previous week to
8 that, I could have worked 80 hours.

9 And I don't track it. So it's all --
10 you're asking me questions that are forcing me to
11 speculate. I should just say I can't speculate on
12 that; so I'll try and do that going forward here.

13 Q Well, it sounds like my business in terms
14 of there are times when you work harder than others.
15 We, of course, keep track of our hours --

16 A For good reason.

17 Q -- yes -- in the legal business.

18 But there's a big difference, you would
19 agree, between working 10 hours a week and working
20 30 hours a week for a company.

21 Would you agree?

22 A Depends -- yes, but it also depends on how
23 efficient you are and what your activity is at the
24 time. So you can accomplish quite a bit in a very
25 focused 10 hours on a particular task, and then

1 spend 40 hours the next week working on menial
2 things and not accomplish very much.

3 Q Understood.

4 But in terms of the amount of time, you
5 would agree that 10 hours is, of course,
6 significantly less than 30 hours a week?

7 A Yes, sir.

8 Q And I would assume that you can perceive
9 the difference on a weekly basis in terms of the
10 number of hours and the effort that you're putting
11 in at the PLUS Coalition in that respect?

12 A Counselor, it's all a blur to me. I just
13 press forward, put out fires, try and advance my
14 various initiatives that I'm involved in, and I
15 don't pay attention to a lot else.

16 And so I don't mind my time in relation to
17 all of these other initiatives that I'm involved in.
18 As you can see on my CV, there's quite a few.

19 So it's difficult to provide accurate
20 testimony, but I can say I agree that there's a
21 difference between 10 hours and 40 hours; that's
22 just straightforward fact.

23 I work at -- you know, when the need for me
24 to put in time arises, I put in the time. If I've
25 got volunteers -- which I do around the world,

1 working with us and for us -- and I can rely on them
2 and I can delegate, I will.

3 And then if the volunteers drop out or some
4 huge metadata announcement happens in the world,
5 then I have to jump in. And last week we had Adobe
6 announce a major initiative, and I -- it just sucked
7 me right in.

8 And so contacting all these other
9 organizations, making sure that we're in the
10 conversation, making sure that we're taking a
11 leadership role with Adobe. And that is
12 accomplished, and now we will see what happens.

13 Q Is there anyone else at the PLUS Coalition
14 who keeps track of your hours? In other words, how
15 many hours you work a week for the PLUS Coalition?

16 A No.

17 Q Are there any full-time employees employed
18 by the PLUS Coalition?

19 A Just me. And I believe I'm full-time.

20 Q Are there any part-time employees employed
21 by the PLUS Coalition?

22 A There have been -- not today. But there
23 have been until about a year ago a part-time
24 employee who worked from the period approximately
25 2004 or 2005 through 2017 or 2018, middle of the

1 year -- I think it was 2018 -- middle of the year,
2 at the PLUS Coalition, who was handling
3 administration.

4 And at times we had a second part-time
5 employee, various people moving through this
6 secondary assistant-type position to the
7 administrator. And her role was triage, handling
8 inbound calls and emails, requests for customer
9 service, people having problems on the website.

10 Her profession was bookkeeper; so she was
11 attending to bookkeeping for the organization and
12 interfacing with the CPA. Just making things work.
13 I would hand things off to her and she would hand
14 things off to me, but --

15 Q What's the name of the person who worked
16 part-time for the PLUS Coalition from approximately
17 2004 through mid-2018?

18 A Pam Gligoriu.

19 Q How do you spell that?

20 A It's a tough last name. G-l-i-g-o-r-i-u.

21 Q And where does Mr. Gligoriu live?

22 A During her tenure with the PLUS Coalition,
23 she lived locally in Santa Clarita, and when she
24 left to pursue another job offer in Santa Clarita,
25 closer to her home than Pasadena, she still lived in

1 Santa Clarita.

2 I believe now she lives in Las Vegas.

3 Q If I were to ask you the same questions
4 that we just went through about the number of hours
5 you work on average per week for the PLUS Coalition
6 regarding 2018, would your answer be the same?

7 A I believe my answer was it varies, and
8 there could be -- a couple of weeks can go by when
9 there is little activity, and then the next week I
10 work a hundred hours in the week and the next week I
11 work a hundred hours in the week.

12 But yes, the answer is the same: It's not
13 predictable. Announcements and developments in the
14 industry can drive it, as well as issues with our --
15 if we have technical issues that I have to jump in
16 and resolve with our website or registry
17 development, that can take up a lot of time.

18 Q In 2017, if I were to ask you the same
19 question about your work hours for PLUS in 2017,
20 would your answer be the same?

21 A I think I consistently worked 40 or
22 50 hours in 2017, 2016, 2015, 2014, and back from
23 there.

24 Q Understood.

25 So it was after 2017 when the change took

1 place?

2 A I wouldn't call it a change. It's in flux.
3 So once we hand over a project to a developer and
4 once all the specifications are done and things are
5 approved and we're waiting for results back from the
6 developer, then the amount of time that's required
7 of me decreases.

8 And I'm more of the delegate or interfacing
9 with other organizations, keeping up with other
10 initiatives. And so the time burden on me goes
11 down.

12 I do assume a lot of -- a lot of work
13 because certain things I can't delegate, but on the
14 other hand, we don't have a volunteer who, you know,
15 cleans the floor at the office. So -- so that can
16 be me; right? As -- as one of the half hours that
17 I -- that I put in.

18 Q I appreciate all that, but my question was,
19 was it after 2017 when the change took place between
20 an average of 40 to 50 hours a week and then how you
21 described your time in 2019 and 2018?

22 A I don't -- I don't view it as a change. So
23 you'd have to rephrase your question.

24 Q Fair enough.

25 In -- at any time during your time while

1 you've been employed by the PLUS Coalition, did
2 anybody else keep track of your hours besides you?

3 A No.

4 Q Okay. Had your compensation changed at any
5 time, let's say over the last seven years, with the
6 PLUS Coalition?

7 A My compensation has never changed for the
8 PLUS Coalition since I was hired in 2004.

9 Q In other words, your salary has not
10 changed?

11 A Correct.

12 Q Okay.

13 A If I requested it, I would probably get a
14 change; but I -- it's partially a volunteer effort.

15 Q I see.

16 (Whereupon, Defendants' Exhibit 5
17 was marked for identification by the
18 Court Reporter.)

19 BY MR. MARDER:

20 Q I'm showing you what's been marked as
21 Exhibit 5. Please take a look and let me know when
22 you have finished looking at it.

23 A I have finished looking at it.

24 Q Do you recognize Exhibit 5?

25 A It's our annual 990-EZ form.

1 Q And the 990-EZ form in effect is the tax
2 return -- the federal tax return that nonprofits
3 file; is that correct?

4 A Yes. I'm not a CPA or accountant, but I do
5 understand that we file this form every year.

6 Q Got it.

7 Now, the Box C up at the top of the first
8 page has the name of the organization and then
9 there's an address below that.

10 Do you see that?

11 A Yes, sir.

12 Q That address is 2797 East Foothill
13 Boulevard.

14 Did I read that correctly?

15 A Yes.

16 Q Is that the current address for the PLUS
17 Coalition?

18 A We're down the street now.

19 Q So the answer is no, that is not the
20 current address?

21 A Correct.

22 Q And when did the PLUS Coalition leave the
23 Foothill Boulevard address?

24 A Not absolutely certain, but we moved
25 offices I think in March or April of 2017? That's

1 the best of my recollection.

2 Q 2797 East Foothill Boulevard in Pasadena,
3 California, is that actually an office or is that a
4 residence?

5 A Office.

6 Q Was there a suite number or was --

7 A 210.

8 Q Suite 210.

9 A Sorry to speak over you.

10 Q No, that's okay.

11 So the PLUS Coalition address at the
12 Foothill Boulevard address was in which suite?

13 A 210 came to mind but it could be 220. But
14 there was a suite number.

15 Q Got it. I just want to make sure the court
16 reporter got it, since we had some -- some talking
17 over each other.

18 Now, I want you to look a little bit down
19 that page, the first page of Exhibit 5, to line 12.

20 Do you see that?

21 A Yes.

22 Q "Salaries, Other Compensation, and Employee
23 Benefits"?

24 A Yes.

25 Q And what is the number that's entered

1 there?

2 A 133,082.

3 Q So, in other words, \$133,082?

4 A Yes.

5 Q And then please turn to the next page.

6 And if you'll look down at the bottom where
7 it says Part IV, do you see that?

8 A Yes.

9 Q Do you see your name listed?

10 A Yes, sir.

11 Q And it shows you as the president and CEO.

12 Is that accurate?

13 A That's correct.

14 Q How many average hours per week does it say
15 in this tax return filed with the federal government
16 that you worked at -- during 2015?

17 A Forty.

18 Q And what does it show that your reportable
19 compensation was for that year?

20 A 78,000.

21 Q Now, the other compensation -- in other
22 words, the difference between the 133,000 shown on
23 the first page and the 78,000 that it shows was paid
24 to you on page 2 -- who was that paid to?

25 A Could be the administrator and any

1 part-time employees. I also frequently defer my
2 salary for the -- that's what happens when you're a
3 CEO of a nonprofit. So I will defer my salary for
4 periods of time -- not forgive my salary; defer --
5 and then eventually the -- when we have sufficient
6 revenue to advance our goals and -- and pay me, then
7 I get paid the whole amount of my compensation.

8 But I do that voluntarily; I'm not asked by
9 the board to do that.

10 Q And I presume there are accounting records
11 of your deferred compensation within PLUS
12 Coalition's books?

13 A I think so, yeah.

14 Q And I would assume that the accountants who
15 prepared this tax return would have -- would have
16 that information?

17 A Sure.

18 Q I'm now going to show you what's been
19 marked as Exhibit 6, or what will be marked as
20 Exhibit 6.

21 (Whereupon, Defendants' Exhibit 6
22 was marked for identification by the
23 Court Reporter.)

24 BY MR. MARDER:

25 Q Can you just take a look at Exhibit 6 and

1 let me know if you recognize that.

2 A Looks like the 2016 990-EZ form for the
3 PLUS Coalition.

4 Q Now, on Exhibit 6, when we look at Box C up
5 near the top, do you see the address?

6 A That's our current address, absent the unit
7 number.

8 Q And what is that address?

9 A 145 North Sierra Madre Boulevard, Unit 4.
10 It does not say Unit 4; blame my CPA.

11 Q Is that a residence or an office?

12 A Office.

13 Q And do you actually have an office there?

14 A Yes, sir.

15 Q And do any other businesses have offices
16 there?

17 A Not in Unit 4.

18 Q Okay. And how long has the PLUS Coalition
19 been at the Sierra Madre Boulevard address?

20 A Well, we're reporting it here in 2016; so
21 it could be that we moved at some point in 2016.

22 Q Do you recall when the company moved to the
23 address at North Sierra Madre Boulevard?

24 A I testified earlier that I thought that it
25 was in March of 2017; it could be at some point in

1 2016. I'm not sure as to that date.

2 I need to correct a previous answer.

3 Q What's that?

4 A You asked if any other businesses have a
5 presence, and I said not in Unit 4, and I forgot
6 about my uncle Barry.

7 So my uncle Barry contacted me and asked if
8 this extra space that I have -- I have an empty
9 office in my office. We have a couple thousand
10 square feet, and it's just me in there. And so he
11 asked if we had an extra office. So he occasionally
12 comes in and he contributes toward the rent.

13 So that's the correct answer to your
14 earlier question. I just forgot about my Uncle
15 Barry Sedlik.

16 Q Thank you, and I do appreciate you
17 clarifying that.

18 Who owns the current office?

19 A I think the company is called Spectrum, but
20 I'm kind of confused as to their corporate entity.
21 They go by Spectrum Properties.

22 Q Now, let's take a look a little bit further
23 down on this document. And if you look at line 12,
24 where it says "Salaries, Other Compensation and
25 Employee Benefits," do you see that?

1 A Yes, sir.

2 Q What's the number that's listed there?

3 A 104-.

4 Q Can you be precise with --

5 A 104,594.

6 Q Thank you.

7 And then let's turn to the next page. And
8 under Part IV, do you see your name there?

9 A Yes, sir.

10 Q And what does it show is the average hours
11 per week that you devoted to the position in 2016?

12 A They reported 40 hours.

13 Q And what is the reportable compensation
14 that is listed here as having been paid to you that
15 year?

16 A It appears I got demoted to 72,000 from
17 78,000 in the -- in the previous year, but it could
18 be that either one of the payments was made, you
19 know, in December the previous year or in January of
20 the next year or just not paid.

21 Q Do you know if the PLUS Coalition keeps its
22 books on a cash basis or an accrual basis?

23 A I believe we're on a cash basis.

24 Q So if your 2016 compensation was paid in
25 2015, that would be reflected in your -- in the 2015

1 tax return; correct?

2 A I would think so, yes.

3 Q Now, when we look at the first page of
4 Exhibit 6 and we look at line 1, where it says
5 "Contributions, Gifts, Grants, and Similar Amounts
6 Received" -- do you see that?

7 A Yes.

8 Q What is the number entered for that?

9 A 8,962.

10 Q And then go down to line 9.

11 What was the total revenue earned by the
12 PLUS Coalition in 2016?

13 A 9,468.

14 Q I'm going to show you what we're going to
15 mark as Exhibit 7.

16 (Whereupon, Defendants' Exhibit 7
17 was marked for identification by the
18 Court Reporter.)

19 BY MR. MARDER:

20 Q Please take a look at Exhibit No. 7.

21 Do you recognize Exhibit No. 7?

22 A It's our 2017 990-EZ.

23 Q And please take a look down at the line
24 which is line 12, "Salaries, Other Compensation, and
25 Employee Benefits."

1 Do you see that?

2 A Yes.

3 Q How much was paid in 2017 according to
4 line 12?

5 A 2,904.

6 Q And now let's look at the next page.

7 And if we look at Part IV, do you see your
8 name?

9 A Yes, sir.

10 Q And what does it show your title as?

11 A President and CEO.

12 Q And according to the federal tax return
13 filed by the PLUS Coalition for tax year 2017, what
14 were the average hours per week that you devoted to
15 that position in 2017?

16 A The reported hours are ten. Or is that a
17 thousand? I -- I don't know. There's no decimal
18 point.

19 Q A thousand hours per week?

20 A There's no decimal point, but I think it's
21 ten, yeah.

22 Q Okay. It's more likely it's ten, isn't it?

23 A Yes, it is. Just --

24 Q We lawyers work a lot, but even we don't
25 reach a thousand a week.

1 A Yeah. That is true, sir.

2 Q Now, if you look in Column C, what was the
3 reportable compensation paid to you in 2017,
4 according to the tax return?

5 A Zero.

6 Q Now, if we look on the first page of 2017,
7 under line 9 -- excuse me -- in line 9 for total
8 revenue, what was the total revenue of the PLUS
9 Coalition in 2017?

10 A 8,609.

11 Q And then the PLUS Coalition of course
12 fairly recently filed its 2018 return; correct?

13 A I believe so. As you know, I've been out
14 of the country; so I'm fairly certain that we filed
15 it.

16 Q One would assume that --

17 A One would assume.

18 Q And if we were to look at the numbers on
19 the 2018 return for your compensation, would they be
20 in the same range as in the 2017 tax return?

21 A Yes, sir.

22 Q And if we were to look at the hours that
23 you worked on average per week in 2018 for the PLUS
24 Coalition, would they be approximately the same as
25 in the 2017 return?

1 A Listening very carefully to your question,
2 you said, "If we were to look at the hours that you
3 worked."

4 If I can understand that question to refer
5 to the hours that are entered into the form, the
6 stated hours in this -- in the return, I do not
7 know, because I didn't consult with the CPA, but it
8 could be.

9 Q That number does not sound unreasonable for
10 2018?

11 A It sounds very unreasonable.

12 Q Okay.

13 A It -- it could be the number that was
14 reported. I don't know. I mean, my actual hours
15 are very significant.

16 Q So let me ask you, sir, do you understand
17 the legal obligations of a president and CEO of a
18 nonprofit when filing a form 990 with the IRS?

19 A Yes, sir.

20 Q And do you understand the legal obligations
21 to make sure that what is reported to the IRS is
22 accurate?

23 A Yes, sir.

24 Q And as you sit here today under oath, is it
25 your testimony that the 2018 tax return is not

1 100 percent accurate?

2 A It's my testimony that I likely worked more
3 hours than appear in the tax return.

4 Q My question to you, sir, is, the 2018
5 return filed by the PLUS Coalition with the IRS, was
6 that 100 percent accurate when it was filed?

7 A And my answer to you is that I worked more
8 hours than I reported in the form; the amount of
9 income is accurate.

10 Q So when we look at -- at Exhibit 7, which
11 is the 2017 Form 990, where the tax return reports
12 an average of ten hours per week devoted to the
13 position by you, your testimony is that that is not
14 accurate?

15 A I worked more hours than ten hours on the
16 PLUS Coalition. So that -- that reporting would not
17 be accurate.

18 Q Where did your accountants -- yours meaning
19 the PLUS Coalition's accountants -- get that ten
20 hours per week number that is in Form -- the Form
21 990 for 2017?

22 A I don't recall, sir.

23 Q Did you look at the Form 990 before the --
24 the accountants filed it with the IRS?

25 A It's possible. I'm sure it was sent to me.

1 We're currently using our past employee as a
2 freelance bookkeeper, and so it's possible that she
3 looked at it and approved it. She's been working
4 for us a long time.

5 But I did -- you know, I take
6 responsibility for the submission of the form. I
7 take responsibility for the accuracy or inaccuracy
8 of the information on the form. And I'm telling you
9 that I worked more hours than are stated on the
10 form.

11 And if -- whatever you want to do about
12 that is fine by me.

13 Q Is it your intention to have a corrected
14 Form 990 filed with the IRS now that I've pointed
15 out the inaccuracy to you?

16 A I will discuss the matter with my CPA. I
17 don't have any intention sitting here at this
18 moment.

19 Q Now, let's keep going through your -- your
20 CV because I want to make sure I understand other
21 things in your CV and I'm clear on them.

22 The PLUS Coalition, please explain to me
23 what work the PLUS Coalition does that relates to
24 determining the license fee for a photograph?

25 A Relates to? So the clarity of the

1 specification of the licensing terms ensures that
2 both parties to a transaction understand the scope
3 of the license granted, and that does relate to the
4 fees, if any, that might be exchanged as
5 compensation for the license. It's not -- doesn't
6 necessarily affect it, but it is related to; so I'm
7 answering your question.

8 The PLUS Coalition specifically does not
9 discuss or even contemplate the value of the
10 licenses due to the nature of the coalition. We
11 have the buyer side; the middleman -- middle
12 persons, like the stock agencies; and the
13 licensors -- licensors, licensees, and agents all
14 involved. And then we also have the preservation
15 side involved.

16 And so we -- we're hands off on any
17 discussion of what the value of a license might be.

18 Q Does the PLUS Coalition collect any data
19 about the actual amounts paid for photography
20 licenses?

21 A Just thinking back 15 years, I'm not sure
22 that we've never received data. Which, if we
23 receive it, then you could say we collected it.
24 We've never requested that data.

25 And I don't know that -- the reason why I'm

1 hesitant in my response is I recall, as we were
2 building the standards, that our volunteers
3 collected what are called licensing matrices from
4 various stakeholders: Getty Images, Corbis, and
5 other stock photo licensors.

6 And by "licensing matrix," I would mean the
7 choices -- it's essentially -- you could think of it
8 as a spreadsheet, just to put it in simple terms,
9 but it's the choices that you have on your licensing
10 an image -- let's say you could pick one year, two
11 years, five years, ten years, et cetera -- in the
12 information that we received -- this would be in
13 2006, 2007, 2008, 2010 -- there were percentages
14 included in some of the spreadsheets that we
15 received.

16 I don't think that was intentional; I think
17 people were just being generous in sharing their
18 business practices with us. So we did not use it,
19 but we collected it unintentionally and ignored it.

20 Q Understood.

21 So would it be fair to say, then, that the
22 PLUS Coalition has never collected and analyzed data
23 on the value of paid-for photography licenses?

24 A Not in dollar amounts. But in terms of
25 relative value, perhaps. And what I mean by that is

1 in certain licensing models, the greater the scope
2 of use, the greater the fee, typically.

3 And in the creation of standardized
4 matrices or licensing menus or guidelines for the
5 creation of menus or suggestions for how menus might
6 be constructed, there is some inherent concept of
7 value that's unavoidable in -- in presenting that
8 information.

9 For example, the hierarchy of a licensing
10 menu from one month to ten years or more than ten
11 years. The hierarchy of a licensing menu from a
12 quarter page to a full page, from usage in -- on one
13 street corner versus usage worldwide.

14 There might be some value implied by the
15 structure of the licensing menus, the hierarchy of
16 the menus that we built, but it would have been
17 unintentional.

18 Q Understood.

19 And I want to make sure that I understand
20 what you're saying. From the time the PLUS
21 Coalition was formed, sometime in the early to
22 mid-2000s until today, although the PLUS Coalition
23 may have collected some data that contains
24 information about the value of images, the value of
25 licenses for images, the PLUS Coalition has never

1 intentionally analyzed those to determine how much
2 different types of photographs -- how much the
3 licenses for different types of photographs cost?

4 A Cost or should cost. And the answer is
5 yes, we have not.

6 Q It's a terrible question.

7 So let me -- let me rephrase it, make sure
8 we both are on the same page.

9 In other words, the PLUS Coalition has
10 never collected data and then looked at that data to
11 analyze how much money has been paid for licenses
12 for photographs?

13 A Not as an official practice. I don't know
14 that no volunteer representing the PLUS Coalition
15 has ever done that, but not to my knowledge sitting
16 here today.

17 Q You can't point to any of that type of work
18 done by the PLUS Coalition today?

19 A Certainly it's not our intent, and our
20 board of directors would be opposed to our
21 involvement in setting prices or suggesting prices.

22 And I'll take that a step further: We
23 don't promote any one licensing model. So the
24 royalty-free model, which I'm sure we'll talk about
25 later, the rights-managed model, and any model in

1 the future, it's not our concern; we just want
2 people to be able to communicate rights information
3 without misunderstandings.

4 Q I appreciate that. We're going to talk
5 more about that in a little bit, but that doesn't
6 really answer the question.

7 The question was, you can't point to any of
8 that type of work done by the PLUS Coalition today?
9 The answer I hear you saying is that no, you can't
10 point to any of that type of work that has been done
11 by the PLUS Coalition as of today; is that correct?

12 A Your question is in the negative; so I
13 would have to say yes, we can't.

14 Q Yeah. Another one of those great lawyer
15 questions.

16 A That's all right.

17 Q But I want to make sure we're clear because
18 I don't want to misunderstand you.

19 As you sit here today, can you point to any
20 work of that nature done by the PLUS Coalition since
21 it was formed?

22 A I cannot point to any work done by the PLUS
23 Coalition to my knowledge toward determining or
24 recommending dollar amounts to be associated -- or
25 pricing to be associated with licenses.

1 Q You mentioned earlier that some of your
2 matrices that were collected may have inadvertently
3 contained some pricing information during the 2006
4 to 2010 time period.

5 Did I hear you correctly?

6 A That's incorrect. Not pricing information,
7 but the percentage difference, for example, between
8 a use in the United States only versus use in
9 United States and Canada.

10 Percentages sitting there in formulas, in
11 spreadsheets, errantly included in submissions to
12 us, which we then ignored -- although I can say I
13 looked at it, but the PLUS Coalition ignored.

14 And I did note in looking at that
15 information that across all of the stock agencies,
16 it appears that they're all copying from each other
17 or all copying from the market leader, because these
18 percentages, like 46.5 percent between "x" number of
19 years and "x" number of years, were identical in the
20 submissions given to us.

21 Now, in my capacity as the PLUS Coalition
22 president and CEO, I did nothing with that
23 information other than to observe it and to learn
24 from it about industry practice.

25 I would doubt that there are many other

1 people who have seen the licensing matrices from
2 multiple stock photography agencies all in one
3 place.

4 Q Since the 2006 to 2010 period, have you
5 collected any of that type of data?

6 A No. We're not going to be doing that for
7 another two years.

8 Q And how about you personally outside of the
9 PLUS Coalition?

10 A Oh, I collect all kinds of data all the
11 time about pricing and licensing and -- I have --
12 I've many activities outside of the PLUS Coalition.

13 Q Good. We'll talk about that later when we
14 get to those activities.

15 A Counselor, with due respect, you said have
16 I personally, and you didn't mention -- I don't
17 recall you saying in my capacity with the PLUS
18 Coalition in that question; so I was trying to
19 answer you fully.

20 Q Yes. And that was exactly what I was
21 asking --

22 A Okay.

23 Q -- about whether you have done that work
24 outside of your position with the PLUS Coalition.

25 A Most definitely, yes.

1 Q We'll talk about that in a little bit.

2 You mentioned earlier that part of the
3 mission of the PLUS Coalition is to promote clarity
4 in the specifications for photography licenses; is
5 that correct?

6 A To simplify and facilitate the
7 communication and management of image rights would
8 encompass clarity and communications about image
9 rights.

10 Q Why is clarity important in that context?

11 A To avoid misunderstandings. There can be
12 words that parties have different understandings of
13 when they're communicating about image rights.

14 Q And how is it that the PLUS Coalition has
15 tried to create a common understanding of what words
16 mean?

17 A So when we formed the coalition, in our
18 initial activities, the board of directors, the
19 founding board of directors, decided that we -- or
20 we were concerned that we didn't know that we could
21 get all of these different stakeholder groups, most
22 of which are at each other's throats and have
23 opposite or let's say conflicting goals -- would
24 collaborate and could agree on anything, even the
25 time of day.

1 That was a little joke.

2 But we were concerned that -- that we would
3 not be successful in getting all these groups to
4 cooperate. Even one photography association with
5 another photography association, they're at each
6 other's throats at the time.

7 And so we decided to have the first step be
8 to have everybody submit lists of the words and
9 phrases that they use when describing image
10 licenses -- and that would be when requesting an
11 image license or when offering it or when granting
12 it -- submit words, which we then collected, made a
13 list of, developed an online system for people to
14 log into and to exchange their thoughts and opinions
15 about what these words mean.

16 What does the word "brochure" mean, would
17 be an example? What does the word "annual report"
18 mean, or the phrase "annual report"?

19 To our surprise, we had a fantastic
20 cooperative spirit, and it's because what -- what I
21 did as the CEO is I said, everybody needs to leave
22 their baggage at the door. The publishers and the
23 stock agencies don't get along. The photographers
24 and the stock agencies don't get along. Certainly
25 publishers and photographers don't. The ad

1 agencies, their trade association really don't get
2 along with the photography association.

3 Leave all that at the door, which is mostly
4 concern about pricing and scope of rights, and we're
5 just going to talk about what the words mean, and
6 then we're going to assign a number to every word.
7 And so if people would like, they can use these
8 numbers or the words themselves to communicate image
9 rights. And whether that's in casual conversation
10 or in a document or in embedded metadata or between
11 two computers talking to each other, a bit more
12 clarity and less chance for misunderstanding.

13 And so we set about developing definitions
14 for words and using them in example sentences and
15 alternative meanings of the words, and even
16 suggestions for words that are likely to cause
17 misunderstanding, this type of thing.

18 We had at least 500 people who were a core
19 group. We had about ten people who were -- well,
20 six to ten people who were, like, managing editors.
21 And then, beyond that, we had 1,300 to 1,500 people
22 in 120 countries participating in submitting their
23 suggestions for what these words mean.

24 And we decided to start it in English.
25 It's never been a U.S. initiative, but we had to

1 start in one language; so we decided to start it in
2 English.

3 And we worked our way through a thousand or
4 1,500 terms -- I don't know the exact count -- and
5 developed definitions for those terms and then put
6 it to -- put it out to the marketplace for comment,
7 accepted comment, made edits, put it back out, three
8 times, and then finally, final version and a vote by
9 this balanced and neutral board of directors, to
10 approve these definitions.

11 Now, is this an ANSI standard or, you know,
12 an official standard in the United States? No.
13 It's a standard developed through a grass-roots
14 effort that people can use or not use.

15 But it's seen acceptance around the world.
16 It's not pervasively accepted, but as I look around
17 in various countries and in various applications and
18 websites and industry groups, pieces of this
19 standard are in use all over the place.

20 Now, it's what we call the PLUS glossary,
21 and then we set about developing other standards or
22 guidelines.

23 Q That was going to be my next question.

24 When a copyright holder is negotiating a
25 license with a particular potential licensee, does

1 the copyright holder have any obligations with
2 respect to that negotiation?

3 A Legal obligations or professional
4 obligations? We should probably tackle those
5 things --

6 Q Any obligations.

7 A From a professional standpoint, the
8 copyright owner or its representatives should make
9 an effort to clearly communicate the rights
10 information that they are offering in response to a
11 request or offering speculatively.

12 That offer increasingly and -- increasingly
13 is made in emails by my fellow photographers,
14 sending emails that are more narrative than precise.

15 But my answer is that from my perspective,
16 the photographer should make an effort to inform the
17 client of conditions, permissions, constraints,
18 obligations, and that can be in a formal estimate or
19 in an email or otherwise.

20 That was my answer about professional
21 obligation. I can answer, I suppose, on the legal
22 side, although it would be legal -- it could be
23 construed as legal opinion. But my -- it's where I
24 live everyday as a licensing expert; so I can
25 explain my opinion about legal obligations if you

1 wish.

2 Q In addition to the lighting class that you
3 mentioned earlier and the workshops that you
4 mentioned, have you taught any other photography
5 classes at the College of Art and Design, or
6 whatever the name of the school is?

7 A Not recently. I mean, I'm sure I taught
8 other classes along the way. Also, frequently
9 teachers call upon other teachers to be guest
10 teachers. They're not -- I guess in a public school
11 you'd call it substitute teacher. But I'll be asked
12 to come in to take over a class and teach it. I
13 just don't have specific recollection of the number
14 of times that's occurred, but probably less than a
15 hundred times over the course of my 15 years.

16 Q During your career have you ever taught
17 photographers about photography composition?

18 A Yes.

19 Q During the course of your career, have you
20 ever taught photographers about proper exposure?

21 A Yes.

22 Q During the course of your career, have you
23 taught photographers about techniques to obtain
24 sharp images?

25 A Yes.

1 Q And when I say "sharp images," what do you
2 understand that to mean?

3 A A layperson's term referring to something
4 in the image being in focus.

5 Q Have you taught courses at any time during
6 the course of your career, for instance, that
7 discuss depth of field?

8 A You inserted the word "courses." That
9 wasn't in your previous question. I believe your
10 previous question was have I -- during the course of
11 my career, have I ever taught this subject and that
12 subject and this subject.

13 I haven't taught a course in depth of
14 field, but within my teachings I have taught that
15 subject matter.

16 Q During the course of your career, using the
17 word "course" a little bit differently, have you
18 ever taught photographers how to use different
19 lenses to achieve different effects?

20 A Yes, sure.

21 Q During the course of your career, have you
22 taught photographers about the different
23 characteristics that can be obtained with different
24 types of lenses, such as, for instance, differing
25 depths of field?

1 A I'm sure I have. You know, thinking
2 back -- my focus has been on copyright for the last
3 20 years. So thinking back to miscellaneous events
4 at which I've spoken or groups of photographers that
5 I've spoken with and what the subject matter touches
6 on, I can say that I have taught on technical and
7 creative topics.

8 That has been not my area of focus as an
9 educator because others are able to do that and my
10 specific area of expertise is the area of copyright
11 and licensing.

12 Q And we're going to spend a lot of time on
13 that in a little bit. I'm going to define some of
14 the areas that I understand you've worked in or have
15 not worked in, and we'll delve into some of them
16 more in a little bit.

17 A Okay.

18 Q At some point in your career, is it
19 accurate to say that you spent more of your time
20 taking pictures than focused on copyrights and
21 copyright licensing and the things that you are
22 focused on today in your career?

23 A As a ratio, yes. That was really your
24 question, was more time.

25 So I graduated from the ArtCenter College

1 in 1986 and spent some time building my studio. But
2 at that time I volunteered for the Advertising
3 Photographers of America for their copyright and
4 advocacy committee as a person of -- was I 22 years
5 old at the time or 24 years old?

6 And since that time I have been involved
7 with trade associations, spending what my wife
8 thinks is an inordinate amount of time, week in,
9 week out throughout the year, weekdays and weekends,
10 on nonprofit activities that I continue to do today.

11 As a proportion of the time focused on
12 creating new images for advertising clients, which
13 was my primary focus, advertising editorial clients,
14 that has decreased over the years.

15 Q Let me approach it this way: When was the
16 last time you photographed anything for a client?

17 A Can you be more specific about that?
18 Because I have my advertising photography, and then
19 I have, you know, miscellaneous photography where I
20 might -- let me just answer your question, then you
21 can be as specific as you want to.

22 Probably, from my recollection, within the
23 last three or four months. I have a client coming
24 to my office tomorrow to meet about photographs that
25 he needs, tomorrow at noon.

1 I'm -- I'm not actively promoting myself as
2 an advertising photographer at this time because of
3 my focus on all of the other initiatives that we're
4 going to speak about today.

5 Q I understand there are only so many hours
6 in a day, other than a thousand per week at times.

7 A Right.

8 Q So, again, I'm going to try to approach it
9 from different angles just so I understand your
10 background and -- and what your focus is now versus
11 in the past.

12 A Yes.

13 Q The client who is coming in tomorrow for
14 photographs, what type of photographs is that client
15 asking for? In other words, what are they for? Are
16 they for head shots? Are they for an advertising
17 campaign? Are they for asking you to go out and
18 shoot war photographs?

19 A It's something to do with the promotion of
20 "Star Wars." And other than that, I'm not really
21 certain. He wanted me to sign an NDA when he comes,
22 and --

23 Q Fair enough.

24 What industry is -- is that work for?

25 A Entertainment industry.

1 Q Got it.

2 Before that one, when was the last time
3 that you -- you did photography work for a client
4 for money?

5 A Within the last few months.

6 Q What industry?

7 A Would have been forensic work. I think it
8 was a truck accident.

9 Q Other than in connection with forensic work
10 or other litigation support, when was the last time
11 that you did actual photography work for a client
12 for money?

13 A You mean assignment work or licensing?

14 Q Good question. Assignment work.

15 A It would be at least two years ago, but I
16 don't -- could be three years ago.

17 Q What industry was -- was it at that time,
18 or industries?

19 A I'm not -- I'm not certain, but I know in
20 the last couple of years. I've kind of phased out
21 the assignment photography side of things. As I
22 mentioned, I don't promote myself.

23 So in the last three years or so, I -- you
24 know, this year, the biggest project that I've been
25 involved in is -- it's a big project in Africa that

1 I bid on and then it turned out to be something
2 where I couldn't dedicate three weeks of time in
3 Africa to this particular project. So I did the
4 estimate and then I backed out.

5 That doesn't answer your question, but, you
6 know, I'm trying to advise that, you know, I still
7 get clients contacting me and asking me to work for
8 them, and then I have to make decisions because of
9 these other obligations.

10 Q During the course of your career, have you
11 ever worked for a news media organization?

12 A I'm sure I have.

13 Q As an employee?

14 A No. Worked for as a photographer.

15 Q Okay. Which news media organizations have
16 you done work for as a photographer?

17 A Can I have a look at my CV?

18 Q Oh, absolutely. And it's -- it's there and
19 marked in front of you. So if you need to look at
20 it at any time, please feel free. And just, when
21 you do so, let me know and refer to the page that
22 you're looking at.

23 A Okay. So I'm looking on -- looks like my
24 CV could use some page numbers, or they just didn't
25 come across in this printout.

1 I'm under the section "Partial Client
2 List," which is the second page. "News Media."

3 Did you say news media or television media?

4 Q News media.

5 A I don't know if A&E Television Network is
6 considered news, but I'll continue through this
7 list. It says A&E Television Network.

8 I don't know if the 20th Century Fox job
9 was for -- or jobs was for news media within that
10 organization.

11 BBC. CBS. Well, that might be CBS Sony
12 Music.

13 Q I was just going to ask you about that.

14 A Sorry to speak over you.

15 Q I don't see CBS on here; I see CBS/Sony
16 Music.

17 A Right.

18 NBC Television.

19 MTV Networks is not specifically a news
20 organization and I don't recall what I did for them,
21 but it could have had to do with their news
22 reporting.

23 Q But you have no idea as you sit here today?

24 A I don't. Same with Paramount Pictures.

25 Q As you sit here today, you don't know

1 whether you did work for Paramount Pictures that
2 relates to news media; is that --

3 A I do not.

4 Turner Broadcasting, I'm certain that was
5 related to their news operations.

6 Moving down into editorial, "Los Angeles
7 Magazine," "Los Angeles Times Magazine," "Music
8 Connection," "Newsweek," "Photo District News,"
9 "Pulse," "Premier," "People," "Rolling Stone,"
10 "Select," "Spin," "Time Life," "Entertainment
11 Weekly," "Glamour," "Guest Informant," "Interior" --
12 sorry -- "Imperial Press," "Interiors and Sources,"
13 "JAZZIZ," "Jazz Times," "Cosmopolitan," "Details,"
14 "Downbeat," "Elle," that's E-l-l-e, "CD Review,"
15 "American Film," "Arts and Entertainment."

16 It is a partial client list.

17 Q So let's go through some of these that you
18 mentioned. First, under the section of your CV that
19 says "Partial Client List - Sedlik Production/Sedlik
20 Design" -- do you see that?

21 A Yes, sir.

22 Q -- you mention A&E Television Network.

23 A Yes.

24 Q Do you see that on there?

25 What work did you do for A&E Television

1 Network that related to news media?

2 A Not sure.

3 Q So how is it that you believe it related to
4 news media?

5 A It could relate to news media. And when I
6 testified about that, I said I wasn't -- I believe I
7 said I wasn't certain that it wasn't an organization
8 within them, but...

9 Q Understood.

10 A There are -- there are -- I'm sorry to
11 speak over you. Can I --

12 Q Please clarify.

13 A Any television network has -- or had a
14 number of shows, and some of those shows are news
15 related or masquerade as news. And so whatever I
16 did for them could have been news related; so...

17 Q Well, I'm asking you today for your memory
18 of what you did, and if you don't remember, please
19 let me know.

20 Okay?

21 A For every entity that I mentioned, it --
22 those are the ones that were most likely news
23 related. I don't have specific recollection of
24 particular jobs for those entities.

25 Q As you sit here today, please identify even

1 one job that you did for a news media organization?

2 A I answered the question already. I can't
3 remember the specific jobs. So, as I sit here
4 today, I can't speculate as to what those jobs were.

5 However, if you -- if -- if the Court
6 agreed that you are allowed to get into my financial
7 background and -- and my past jobs and I was forced
8 to go through all of my records and pull all the
9 jobs, the thousands upon thousands of jobs, and
10 identify which ones were for specific news topics,
11 then I would do so if forced.

12 Q When was the last time that you believe you
13 actually did photography work for a news media
14 organization?

15 A Same answer.

16 Q You have no idea when that was?

17 A I told you, if forced, I would do the
18 research necessary to answer your question fully.

19 Q My question, though, is what your
20 recollection is today.

21 As you sit here today, is it fair to say
22 that you don't remember when the last time it was
23 that you did photography work for a news media
24 organization?

25 A That's right. And that answer does not

1 imply that I did not do the work or that I did very
2 little work. It's just I can't recall. I'm focused
3 on other things.

4 So I would provide the information if -- if
5 you are allowed to extract that from me. I don't
6 think it would be appropriate, but I would have to
7 comply if forced.

8 Q Well, let's -- let's try to approach it
9 this way: Do you believe that the last time that
10 you did photography work for a news media
11 organization was in the 21st Century?

12 A You mean from 2000 on? Right?

13 Q That is the 21st Century. Yes, sir.

14 A I believe that, but it's speculative and
15 it's not good to speculate in depositions. So I
16 will repeat that if I had to provide records of all
17 of my jobs for whatever reason, if they're
18 determined to be relevant to this action, then I
19 would -- and I was forced to do so, then I would do
20 so to the extent those records exist.

21 Q What did you do to prepare for your
22 deposition for today?

23 A I read my report. I read -- let me be more
24 specific. I read my preliminary report and my
25 supplemental report. I read the reports of

1 Ellen Boughn and I believe it's Michelle Riley.

2 I reviewed pleadings in the matter,
3 interrogatories and their answers, request for
4 production, and production.

5 I -- I reviewed a lot of material over the
6 last week to make sure that or -- or -- that I could
7 have the -- provide the best possible testimony here
8 today and the most accurate testimony I can.

9 Q Where are those documents? You didn't
10 bring them with you today?

11 A The documents are listed in my "Materials
12 Considered" list in my report, such as the
13 complaint. And I'm not going to bring -- or I did
14 not bring copies of documents that you already have
15 that I have. So the complaint only exists in
16 digital form. The answer, the interrogatories.

17 You know, if you wanted me to print out
18 15,000 pages of documents at your cost and you pay
19 for my time in doing it, then I will make copies of
20 everything that you already have.

21 Q Sir, my question was different than -- than
22 what your answer addressed.

23 My question was very simple: Where are
24 those documents right now? Where do those
25 physically exist right now?

1 A They don't physically exist because they're
2 digital copies.

3 Q They're data in a computer?

4 A Yes.

5 Q So they exist on your computer at home? at
6 your office? Where?

7 A My computer at my office.

8 Q Okay. Did you take any handwritten notes
9 in connection with this case?

10 A I don't recall taking handwritten notes in
11 connection with this case.

12 Q If you did take handwritten notes in
13 connection with this case, where would you have kept
14 them?

15 A In the file that I presented to you today
16 doesn't have any handwritten notes in it.

17 Q Have you ever spoken to Brittney Gobble?

18 A Yes.

19 Q How many times?

20 A Possibly twice? Once or twice, not --
21 not -- I didn't physically meet with her.

22 Q That was going to be my question.

23 Were those conversations over the phone?

24 A Over the phone.

25 Q Did you take any notes during those

1 conversations?

2 A I took notes into my report draft for the
3 purposes of filling in blanks in my report or
4 confirming information that I needed for my report.

5 Q I'm not clear on your answer.

6 My question was, as you're having the
7 conversation with Ms. Gobble, were you taking notes
8 on a piece of paper?

9 A No.

10 Q Did you take notes on a piece of paper
11 after you hung up with Ms. Gobble?

12 A I took notes, if any, into the draft for my
13 report, as I testified earlier.

14 Q When did you speak to Brittney Gobble?

15 A I believe that the date of our conversation
16 is reflected in my preliminary expert report in the
17 footnotes.

18 Q Other than that, you had no other
19 communications with Ms. Gobble?

20 A I had two communications, two interviews,
21 and that's it.

22 Q When you prepared your reports -- let me
23 back up for a second so that we're clear.

24 You have two reports that you prepared in
25 connection with the case currently pending in

1 Maryland; correct?

2 A I'll have to say that I'm going to assume
3 that "pending in Maryland" is correct. I see
4 Baltimore is on these documents, and so I'm --
5 I've -- I've written two reports in this case.

6 Q That's -- that's what I'm talking about.
7 In this case, the one that we're here for today.

8 A Yes.

9 Q However, you also prepared one or more
10 reports in connection with a case filed by the
11 plaintiff in Tennessee; correct?

12 A Yes.

13 Q And when did you speak with Ms. Gobble
14 before you prepared that report?

15 A The date would be reflected in the -- I
16 believe would be reflected in the -- in the report.

17 Counselor, may I say, it would be my report
18 in the previous matter.

19 Q I understand. Thank you.

20 A Okay.

21 Q Other than speaking to counsel in this
22 case, do you recall speaking with anybody else in
23 connection with this case?

24 A Stock photo agencies.

25 I don't know if Johnnie Gobble was on the

1 call back -- you know, I think I had one call with
2 Ms. Gobble for the previous case and one call in
3 relation to this case. I mentioned I've had two
4 calls, I believe. And I don't know if
5 Johnnie Gobble was on or not on those calls.

6 Photographers.

7 I'd need to look at my footnotes. I have a
8 lot going on and I don't recall, you know, everybody
9 I've spoken with.

10 Q And we're going to go through your report
11 in a lot of detail later; so let's put aside that
12 portion of your answer till then.

13 Okay?

14 A Yes.

15 Q But we'll get those footnotes out for you
16 in a little bit.

17 A So my testimony is that I would need to
18 look at my report to refresh your recollection to
19 answer the question you're asking me right now
20 accurately.

21 Q Understood. And we'll get to it shortly.

22 Excuse me.

23 What did you do to prepare for your
24 deposition today other than what you've already
25 mentioned?

1 A Reviewed documents. I've already -- so you
2 said other than conversation with retaining counsel,
3 what did I do? And then I answered that question.
4 I think I answered that fully.

5 Q How many times did you speak to counsel
6 about your deposition today?

7 A When you said "today," at the -- I'm not --
8 I'm not playing games with you. When you said
9 "today" at the end of that sentence, how many times
10 did you speak to him today or about my deposition,
11 period?

12 Q That's a fair clarification.

13 A Want to cut "today" off the end of that?

14 Q Let me do it this way: Other than speaking
15 to Mr. Allen or Mr. Quisenberry about scheduling
16 today's deposition, did you have other
17 communications with them about this deposition?

18 A Yes. I was here yesterday to discuss the
19 deposition with Mr. Allen.

20 Q Approximately how much time did you spend
21 here yesterday with Mr. Allen?

22 A From 10:00, approximately, to -- I don't
23 recall the time I left, but maybe 6:00, 5:00,
24 something like that.

25 Q Was anybody else present for that meeting?

1 A No.

2 Q Did Mr. Allen provide you with any
3 documents yesterday?

4 A I don't believe so, but I did request
5 copies of the most recent interrogatory and request
6 for production responses. I think -- I think he
7 gave me those two documents.

8 Q Anything else?

9 A I don't believe so.

10 Q Did you ask for any other documents that
11 you have not yet received from Mr. Allen?

12 A Over the course of my engagement or in
13 anticipation of this deposition?

14 Q During your meeting yesterday.

15 A No.

16 Q Did you take any notes during your meeting
17 with Mr. Allen yesterday?

18 A No.

19 MR. ALLEN: It's 11:43. Should we take a
20 break?

21 MR. MARDER: Yeah, let's stretch our legs a
22 bit. Be a good time --

23 MR. ALLEN: You okay now?

24 MR. MARDER: -- to stretch your legs.

25 THE WITNESS: Thank you.

1 THE VIDEOGRAPHER: We're going off the
2 record. The time is 11:43 a.m.

3 (A recess was taken from 11:43 a.m.
4 to 11:59 a.m.)

5 THE VIDEOGRAPHER: We are now back on the
6 record. The time is 11:59 a.m.

7 MR. MARDER: Let's go ahead and mark these
8 two, please.

9 (Whereupon, Defendants' Exhibit 8
10 and Defendants' Exhibit 9 were
11 marked for identification by the
12 Court Reporter.)

13 MR. ALLEN: These are --

14 MR. MARDER: His reports.

15 MR. ALLEN: If you're not handing me a
16 copy, let me know what this is, I can pull it up if
17 it's one of the exhibits.

18 BY MR. MARDER:

19 Q Mr. Sedlik, I am handing you two exhibits,
20 Exhibits 8 and 9.

21 And just to speed things along with us, is
22 Exhibit 8 your preliminary expert report issued in
23 this case dated April 12th, 2019?

24 A Yes. Without the exhibits.

25 Q Yes. And then is Exhibit 9 your

1 surrebuttal expert report submitted June 21st, 2019?

2 A Yes. I'm not sure that there were
3 exhibits. It looks like there's a "Materials
4 Considered" list attached.

5 MR. ALLEN: Counsel, you don't have copies
6 for me for these; is that correct?

7 MR. MARDER: No. I did not bring the
8 reports or the exhibits across the country. As I
9 mentioned, there were thousands of pages.

10 MR. ALLEN: I understood the exhibits; I
11 just wasn't sure if that included the report. So
12 that's fine. I'll just --

13 MR. MARDER: Yeah.

14 MR. ALLEN: -- pull it.

15 MR. MARDER: Rob, I do happen to have an
16 extra copy of his preliminary report I can give you.

17 And my apologies. You know I normally like
18 to provide those, but it was a long flight.

19 Q All right, Mr. Sedlik, so I have given you,
20 so that you will have in front of you, Exhibits 8
21 and 9, your two reports. At times we'll be
22 referring to those; so now at least you have them in
23 front of you to refer to.

24 A Thank you.

25 Q And then, lastly, why don't we mark the

1 index to exhibits.

2 (Whereupon, Defendants' Exhibit 10
3 was marked for identification by the
4 Court Reporter.)

5 BY MR. MARDER:

6 Q And I've shown you what's been marked as
7 Exhibit 10.

8 And -- excuse me -- is Exhibit 10 a list of
9 the exhibits to your preliminary report?

10 A Yes. I'm not aware of the practice in
11 depositions for exhibits; so I didn't -- I didn't
12 place the index on the back of the case caption
13 page; you did. This -- this wouldn't be how I
14 presented it.

15 But yes, that index to exhibits was
16 attached to that report.

17 Q Yes. I copied on two sided for this case.
18 I'm trying to be good to the trees today.

19 A Very good.

20 Q Now, your last report that I have is dated
21 June 21st, 2019, which is Exhibit 9.

22 Do you see that?

23 A Yes.

24 Q What work, if any, have you done in
25 connection with this case since issuing your

1 surrebuttal expert report on June 21st, 2019?

2 A I think that there was quite a bit of
3 back-and-forth communication about the scheduling of
4 this deposition, because I was at our home in Greece
5 at the time, and so I dedicated time to those
6 discussions.

7 I dedicated time to telephone conversations
8 with retaining counsel whenever he would call me.

9 And then the preparation for this
10 deposition that we discussed just prior to the
11 break.

12 Q Since issuing your surrebuttal report on
13 June 21st, 2019, have you reviewed any other
14 documents or materials in connection with this case?

15 A I watch the docket, and when there is a new
16 entry in the docket, I will review it, unless it's
17 something procedural.

18 I believe that there have been some
19 interrogatory answers and response to requests for
20 production and a few miscellaneous items that -- I'm
21 a little confused as to whether there have been
22 relevant motion- -- I know that there were some --
23 some discovery issues.

24 I'm sorry, I didn't precisely answer your
25 question there. I can try again if you ask it

1 again.

2 Q Other than what you have seen on PACER and
3 the discovery documents that you may have been
4 provided by plaintiff's counsel, have you reviewed
5 any other documents or materials in connection with
6 this case since you issued your surrebuttal report?

7 A Right before the break we talked about a
8 lot of different review, and I mentioned what I had
9 done and reviewed.

10 So are you including that? You want me to
11 testify again about all of that? Or prior to my
12 preparation for the deposition, are we talking about
13 the period between submission of the report and then
14 all the activity that I mentioned before we had a
15 break?

16 Q Other than what you have previously
17 mentioned in connection with your deposition
18 preparation work with Mr. Allen, have you reviewed
19 any other documents or materials in connection with
20 this case since you issued your surrebuttal report?

21 A I like that question, and I don't believe
22 so, other than what would be in my "Materials
23 Considered" list for the report. In other words,
24 new documents or what have you.

25 But I have a "Materials Considered" list

1 with each report; I don't understand you to be
2 asking about those, because I could have reviewed
3 those at any time. And then the PACER documents
4 since then, and the production that you mentioned,
5 and then the deposition preparation that I've
6 already testified about.

7 I don't believe so, not that I can recall.

8 Q Are there any errors in either of your two
9 reports?

10 A Not that I have identified or that have
11 been identified to me.

12 Q Have you been asked by anybody to form any
13 additional opinions in connection with this case
14 after this deposition?

15 A No. I will say that in my report, I
16 repeatedly reserve the right, to the extent that I
17 have the right, to revise my opinions in the event
18 that any of the listed assumptions are shown to be
19 incorrect. Those assumptions were given to me;
20 they're not my own assumptions. And also should
21 additional information come to light.

22 I -- as I recall, before the preliminary
23 report there was quite a bit of information that had
24 not yet been produced that I thought would be
25 relevant to my opinions; that's why I was reserving

1 that right. And, you know, one area that comes to
2 mind is the recent production of advertising
3 revenues that I didn't have at the time.

4 But I think I've just gone beyond the scope
5 of your question.

6 No, I have not been asked to form
7 additional opinions.

8 Q Thank you.

9 A Just trying to be helpful.

10 Q That was my question.

11 Have you communicated with a litigation
12 finance company in connection with this case?

13 A I don't think I've ever communicated
14 with -- well, no. The answer is no.

15 Q Have you provided any information to
16 plaintiff's counsel for plaintiff's counsel to give
17 to a litigation finance company in connection with
18 this case?

19 A No, not -- well, not that I recall. I
20 mean, I don't -- I don't believe I know any
21 litigation finance companies.

22 Q Originally, if I recall, you were retained
23 by Mr. Quisenberry and his law firm in connection
24 with this case; is that correct?

25 A I'd have to look at my engagement letter to

1 see whether I was retained jointly by his --
2 Mr. Quisenberry's firm and the Gobbles or -- or
3 Brittney Gobbles' corporation, or I was retained by
4 the firm. So I do have a copy of my engagement
5 letter here today that's been marked.

6 Q And please feel free to refer to either of
7 your two files, which are Exhibits 3 and 4, if you
8 need to answer any of my questions.

9 A For the record, I'm opening the folder that
10 is Exhibit 4, and within that folder is my
11 engagement letter. Try and comply with counsel's
12 request that I keep the order the same.

13 Q The order isn't as important as making sure
14 what's in File 4 stays in File 4.

15 A Ah, yes, okay. Okay.

16 So I have in front of me within Exhibit 4 a
17 document dated September 27th of 2017 that is my
18 engagement letter in the matter. It's entitled
19 "Consulting Services Agreement."

20 Q Who retained you?

21 A In Section A of my engagement letter, it
22 states (as read):

23 Responsibility: Party and law
24 firm are jointly and severally
25 responsible for full payment --

1 I'm going to interrupt myself. I'm going
2 to move up to the preamble that says (as read):

3 Jeff Sedlik (Sedlik) is hereby
4 engaged by the above-listed party
5 and law firm, jointly referred to
6 herein as, quote, client, unquote.
7 And then it goes on.

8 So, to answer your question, the above-
9 listed party is Brittney Gobble Photography, LLC,
10 and the above-listed law firm is Polasek,
11 Quisenberry & Errington LLP.

12 Q Prior to your September 27th, 2017,
13 engagement in connection with this matter, had you
14 ever met Brittney Gobble or Johnnie Gobble?

15 A No.

16 Q Prior to your September 27th, 2017,
17 engagement in connection with this case, had you
18 ever met Mr. Quisenberry?

19 A No.

20 Q Prior to your September 2017 engagement in
21 this case, had you ever done any work for
22 Mr. Quisenberry's firm other than this case?

23 A My history goes back 20 years, and through
24 the course of those 20 years, sitting here today, I
25 don't recall ever communicating with or being aware

1 of that firm.

2 I would need to do some kind of review to
3 see if they had contacted me about another case in
4 the past, but I think not.

5 I think -- the first contact I had was
6 from -- was in relation to this case. I was
7 unfamiliar with Brittney Gobble Photography and the
8 firm and Mr. Quisenberry at that time.

9 Q Before Mr. Allen became involved in this
10 case, had you ever worked with him before?

11 A I had been retained by -- yes.

12 Q How many times?

13 A I'm going to have to just think out loud
14 here. I had been retained as an expert in a matter
15 that's listed in my cases; I believe it's
16 "Photographic Illustrators Corporation v. Sylvania"
17 or "Osram." And a case, "Navarro v." -- "Procter &
18 Gamble." Mr. Allen was one of the attorneys, not
19 the lead attorney working on that case.

20 Can you just restate the question? I just
21 want to make sure that I precisely answer exactly
22 what you ask because I was doing a little thinking
23 there.

24 Q Before Mr. Allen became involved in this
25 case, had you ever worked with him before?

1 A "Photographic Illustrators Corp.," "Navarro
2 v. Procter & Gamble."

3 And when you say "worked with him," it
4 would have been I was retained by a firm at which he
5 worked and he was on the case. But those are the
6 two that I can recall sitting here at the moment.

7 Q Are you currently working on any other
8 matters with Mr. Allen other than this case?

9 A Yes.

10 Q How many?

11 A I'm going to again have to just go through
12 my head and remember; so I can't count them without
13 recalling the cases.

14 So there's only "D'Pergo v. Sweetwater."

15 Q So that's one?

16 A I think that's one. I had to think --
17 think it through for a second.

18 Q Have you issued your report in that case
19 yet?

20 A Yes.

21 Q How did you get involved in this case?

22 A I was retained by Mr. Quisenberry -- or
23 Quisenberry; I'm not sure how to say it -- on a case
24 that was the -- the Gobbles were the plaintiff
25 against WENN, W-E-N-N. And then, along the way, I

1 was asked to work in this matter.

2 Q Now, the prior case, which is "Gobble" --
3 we'll call it "Gobble v. WENN," the Tennessee
4 case -- is it okay if we just refer to that as "the
5 Tennessee case"?

6 A Okay.

7 Q Prior to the Tennessee case, you previously
8 said you'd never worked with Mr. Quisenberry or his
9 law firm; so how did you and Mr. Quisenberry become
10 connected?

11 A Oh. That I don't know. My -- people
12 contact me and ask if I have served as an expert or
13 would like to serve as an expert or -- or what have
14 you. And that's likely how I became involved in the
15 case, an inquiry from Mr. Quisenberry.

16 Q Have you or anyone on your behalf ever
17 monitored copyright cases that have been filed and
18 then contacted lawyers involved in those cases
19 seeking to be retained?

20 A Yes. When time permits, either myself or
21 my ex-employee Pam Gligoriu I mentioned before would
22 look through copyright cases that relate to
23 photography and -- and it was primarily Pam -- and
24 would reach out to those -- oftentimes, when the
25 case is filed, there's just the plaintiff's attorney

1 listed. So it depends on when we see that case.

2 There's -- there's too many cases to
3 monitor and contact all -- you know, all attorneys
4 for all litigation related to copyright. Obviously
5 we don't have the time to do that.

6 But oftentimes the first attorney that's
7 listed, if -- if Pam would have seen that, she was
8 directed to send an email to that party with my --
9 oftentimes with my CV to ask if -- you know, to --
10 to -- to describe my capabilities and experience and
11 to suggest that if they need an expert, they can
12 contact us.

13 Q Is that how you became involved in the
14 Tennessee case?

15 A I really don't know, Counselor.

16 Q Did either you, Pam, or some entity that
17 you were involved in subscribe to a service that she
18 would review their materials to find these new
19 cases?

20 A I subscribe to PACER.

21 Q Now, PACER, you have to go in and do
22 searches; right?

23 A Yeah.

24 Q Other than PACER, do you now or in the past
25 have you ever subscribed to a service that would

1 give you emails or other types of information about
2 newly filed copyright cases?

3 A Yes.

4 Q What was that service?

5 A Just to differentiate, your first question
6 was did we, to be involved in this case, and your
7 second question is different; is that correct?

8 Q Second question is different.

9 A Yeah, okay. Then I understand it.
10 LexisNexis.

11 Q And tell me what information you would
12 receive from LexisNexis.

13 A List of copyright cases.

14 Q Do you still subscribe to that service?

15 A I do, but I'm in the process of terminating
16 it.

17 Q When did you first subscribe to that
18 service?

19 A Year, year and a half ago.

20 Q Prior to a year or a year and a half ago,
21 did you subscribe to another service that provided
22 similar information?

23 A No. I mean, we might get emails from The
24 Copyright Alliance or Library of Congress or legal
25 publications that talk about new cases that pop up.

1 Or I might see something in the news or what have
2 you.

3 And -- but the answer is no, I didn't -- to
4 my knowledge, I didn't subscribe to anything other
5 than, like, an email subscription. We used PACER
6 until very recently, like within the last two years.
7 And as I said, I'm terminating LexisNexis; it's just
8 useless.

9 Q You -- you mentioned Pam -- what's her last
10 name, Gregariu?

11 A Gligoriu.

12 Q Gligoriu?

13 A Yes.

14 Q I'm going to call her "Pam," if that's okay
15 with you.

16 A Okay.

17 Q Was Pam your personal employee, or did she
18 work for PLUS? I don't remember.

19 A She worked for PLUS and my company. PLUS
20 could not afford or I couldn't justify having a
21 full-time person. So she would -- for PLUS, I could
22 not afford -- PLUS could not afford to have a
23 full-time administrative person; there's not that
24 much administration. So I offered up the board to
25 cover her salary personally for the time that she

1 wasn't working on PLUS.

2 So the answer is she worked for both; she
3 worked 15 minutes for one company and 30 minutes for
4 the other company and what have you, back and forth,
5 and tracks that time and then she's written two
6 separate paychecks.

7 Q Other than Pam reaching out to lawyers in
8 cases, have you personally reached out to lawyers in
9 cases seeking to become involved in those cases?

10 A Yes. And I should also say that when Pam
11 has done it, she does it as me from my email
12 account.

13 Q And now my question is very specific: It's
14 whether you personally have done that?

15 A Yes.

16 Q How many times?

17 A I don't know. I don't count the times. If
18 I have quiet time at the end of the day, usually
19 that's 1:00 or 2:00 in the morning when I've
20 finished work, and I can spend an hour going over
21 cases that have come out, then I will occasionally
22 go through it.

23 And it's not really systematic in any way;
24 perhaps it should be, but I'm very busy with other
25 things. And so I don't -- I'm not aggressive in

1 promoting myself as an expert. I'm busy with other
2 things.

3 But I do, when I see a case come up that I
4 think is interesting from a copyright perspective or
5 that I -- where I think my expertise would be of
6 benefit to allowing the parties and the Court to
7 better understand the situation, then I will contact
8 them.

9 Q Do you know what an expert witness service
10 is?

11 A I mean, "expert witness service" can mean
12 all kinds of things.

13 Q What does it mean to you?

14 A It can mean a company that offers education
15 to experts. It can mean a company that has experts
16 who are its employees or any kind of contractors.
17 It can mean a company that acts as a directory and
18 takes inbound calls and emails and then, you know,
19 participates in vetting the expert and matching up
20 the expert with the client.

21 Q Let's talk about that latter type of expert
22 witness service.

23 Okay?

24 A Yes.

25 Q Are you listed with any of those types of

1 expert witness services?

2 A I'm sure that I am, but I couldn't tell you
3 which. That could be found with a Google search.
4 But I directed Pam to make sure that if somebody was
5 looking for me or was looking for an expert with my
6 type of expertise that I could be found. And I
7 authorized her to spend -- I think a thousand
8 dollars a year or something like that -- I don't
9 know the amount -- if there's a charge for listing.

10 And that's in total, you know, throughout
11 multiple listings.

12 Q And in fact, sir, you have paid to be
13 listed with these types of expert witness services;
14 correct?

15 A Again, I'm not closely monitoring that.
16 I -- I have paid, but I have not initiated or done
17 the research. In other words, the end result is
18 that Pam, if she's done what I've asked her to do,
19 would have found companies and uploaded my
20 information and paid using my credit card.

21 Q Now, those payments have to be made
22 annually, don't they?

23 A I do not know. But I would assume
24 annually, quarterly, monthly -- I do not know.

25 Q And you are aware, sir, that you have paid

1 numerous expert witness services to be listed with
2 them, aren't you?

3 A What does "numerous" mean? I think I've
4 paid one or maybe two, and others are -- offer free
5 listings. And still others, there's -- there's
6 quite a few services that go out, take expert
7 witnesses' names and contact information from
8 various sites and put it on their own site without
9 contacting the witness, and then accept calls and
10 emails and route those inbound inquiries to other
11 experts. And that is problematic.

12 But I think maybe one or two, one being --
13 I don't -- I don't know the names, actually, because
14 I'm not really paying attention to that.

15 MR. MARDER: Let's go ahead and mark that,
16 please.

17 MR. ALLEN: Is this 11?

18 MR. MARDER: That's what my records show.

19 THE REPORTER: Yes.

20 (Whereupon, Defendants' Exhibit 11
21 was marked for identification by the
22 Court Reporter.)

23 BY MR. MARDER:

24 Q Please take a look at Exhibit 11. And just
25 to move things along, expert -- excuse me,

1 Exhibit 11 appears to be a printout from a website
2 with a URL on the bottom of the first page for a
3 company called ALM Experts; is that correct?

4 A Yes.

5 Q And it has your name and contact
6 information on the front page; is that correct?

7 A Yes.

8 Q How much did you pay ALM experts to be
9 listed with them?

10 A I have no idea. I limited Pam to a budget
11 of a thousand dollars a year for all expenses having
12 to do with expert promotion. So I would assume that
13 she did not exceeded the budget, but I don't really
14 check.

15 Currently, she's my bookkeeper. She
16 makes -- you know, she works remotely as a
17 freelancer and pays my bills and runs on autopilot
18 because she's -- she started working for me in 2001.
19 So I don't think about day to day, and I don't think
20 about things like this.

21 Q Looking on Exhibit 11, do you see about
22 two-thirds of the way down, three lines below your
23 name is a URL of www.photographyexpertwitness.com?
24 Do you see that?

25 A Yes.

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1 Q Do you recognize that website address?

2 A Yeah. That's a domain that I own.

3 Q That's what? I didn't hear you.

4 A That is a domain that I own.

5 Q When did you register that domain name?

6 A I do not know. Some time ago. I do know
7 that I don't put any effort into it; it's just a
8 text site with information about my requirements on
9 it. I tried -- in a moment where I had free time on
10 a weekend, I created a WordPress version. And I
11 don't know if I actually moved the site into that
12 WordPress version or what have you.

13 But it is one embarrassing thing about me,
14 is my poorly designed expert witness website. I
15 just do not have and don't expect to have the time
16 to put any effort into it. I don't believe I've
17 touched it in quite some time.

18 MR. MARDER: Let's mark that, please.

19 (Whereupon, Defendants' Exhibit 12
20 was marked for identification by the
21 Court Reporter.)

22 BY MR. MARDER:

23 Q Please take a look at Exhibit 12. That's a
24 two-page exhibit on the front and back. Again, I'm
25 trying to save the trees.

1 Do you recognize Exhibit 12?

2 A It looks like a printout from my website,
3 and it does say "Copyright Jeff Sedlik 2010." I
4 don't know that I've been to the site since -- that
5 was nine years ago.

6 Usually I'm pretty buttoned up about all my
7 public-facing appearances, but I'm not really
8 focused on my expert witness.

9 Q Why did you create the website
10 www.photographyexpertwitness.com?

11 A So that I could work on cases that -- if I
12 have an opportunity to work on cases that were of
13 interest, whether for plaintiff or defendant, where
14 I could bring my expertise to bear, that's all.
15 Otherwise, nobody could find me.

16 Q Please take a look at Exhibit 13.
17 (Whereupon, Defendants' Exhibit 13
18 was marked for identification by the
19 Court Reporter.)

20 BY MR. MARDER:

21 Q And again, just to move things along,
22 Exhibit 13 appears to be a printout from a website
23 from expertpages.com, and it has your name on the
24 first page; is that correct?

25 A Yeah. I'm not really familiar with this

1 entity.

2 Q Now --

3 A I do -- I'm sorry to cut you off there. I
4 see that it's got the wrong address on there, and I
5 think we moved in 2006, we established.

6 So Pam, when she left for the other
7 company, probably stopped updating things. And I
8 certainly am not monitoring.

9 Q Now, where it says "About the Expert," do
10 you see that language?

11 A Yes.

12 Q That information is actually created by the
13 expert witness and given to the service; correct?

14 A I don't know that. As I mentioned a few
15 minutes ago, some of these sites just go grab
16 experts' information and make listings and post them
17 and then pass that work along to other experts.

18 They create a form on their page that --
19 through which people can express interest in hiring
20 the expert and then goes to -- goes to the service
21 and they pass the work along to whoever is paying
22 them, I suppose. I don't know.

23 Q So is it your testimony here today that the
24 first sentence under the heading about the expert
25 which begins, "The leading consultant and testifying

1 expert witness" -- is it your testimony you did not
2 draft that sentence or have somebody draft that on
3 your behalf?

4 A Let me just look and see if it's from my --
5 one of my -- let me just see here, from this website
6 here. Copyright licensing. Let's see.

7 Well, there it is, so it's -- it's from the
8 first paragraph of my website: Copyright,
9 licensing, contracts, business practices, industry
10 standards.

11 So -- I mean, I wrote the text that's on my
12 website, or one of my employees did, but I would
13 take responsibility for it. And that same text ends
14 up on ExpertPages. And either this is one of the
15 sites that Pam put it on, could be a free site,
16 could be a paid site. Could be a paid site that has
17 free listings. And that looks like a copy/paste to
18 me, except for the words "deleting."

19 Q Sir, my question to you is -- is very
20 narrow.

21 My question is, the first -- let me
22 rephrase it.

23 The heading that says "About the Expert" on
24 Exhibit 13 -- do you see that?

25 A Yes, sir.

1 Q Do you see the paragraph below that?

2 A Yes, sir.

3 Q My question is very narrow: Either you
4 drafted that and provided it to ExpertPages or
5 someone drafted that and provided it to ExpertPages
6 on your behalf; correct?

7 A Sounds like you're ignoring my testimony.

8 Q No, sir. I want to make sure I understand
9 your answer, because you haven't answered the
10 question.

11 A You asked me that question, and my
12 response, with all due respect, was that it --
13 expert sites take content from expert -- I mean,
14 expert services or sites that act as directories
15 take content from experts' own websites, copy it
16 without permission, create listings for those
17 experts, and then reroute those inbound calls to
18 others.

19 So I don't know where this came from, but
20 it appears to be word for word what is on my
21 website.

22 So I drafted what is on my website, or an
23 employee drafted it. And my testimony was that
24 either ExpertPages went to my site and took it and
25 put it on their site, or it could be a site that Pam

1 submitted my information to.

2 I don't know the -- so I don't know which
3 one of those things occurred, but it is rather
4 nefarious what some of these sites do.

5 (Whereupon, Defendants' Exhibit 14
6 was marked for identification by the
7 Court Reporter.)

8 BY MR. MARDER:

9 Q Please take a look at Exhibit 14. And I
10 want to direct you to the web address down in the
11 lower left corner of Exhibit 14.

12 Do you see that?

13 A Yes.

14 Q What is the website address on the bottom
15 of the front page of Exhibit 14?

16 A Professorjeffsedlik.com.

17 Q And do you own that website?

18 A I own that domain. The website is
19 published on that domain through an internet service
20 provider.

21 Q And it was created by you or someone on
22 your behalf?

23 A Yes.

24 Q By the way, do you have an office in
25 New York?

1 A I have. At the moment I -- I have a phone
2 number that rings in Los Angeles, but I had a
3 photography studio in New York, and it rings here
4 when I'm here and then it rings to my cell phone
5 when I'm in New York. I'm in New York quite a bit.

6 Q Now, you just testified that you had a
7 photography studio in New York. My question is a
8 little bit different.

9 My question is, as you sit here today, do
10 you have a photography studio in New York?

11 A Beginning of my answer was that I had and I
12 do not have today an office in New York. Although,
13 when I'm in New York, I either use friend's offices
14 or what have you.

15 Q And do you consider an office the same
16 thing as a studio?

17 A Usually a studio has an office in it. I
18 have -- running four or five different businesses
19 simultaneously, and everywhere is an office to me,
20 my home, my place here, my place in Greece, I have
21 an office there.

22 Q So let me go back to my question. My
23 question was not about an office, but my question
24 was whether you had currently -- my question was
25 whether you currently have a photography studio in

1 New York?

2 A No, I don't have a photography studio --

3 Q Have you ever had a photography studio in
4 New York?

5 A I've shared photography studios in
6 New York, multiple photography studios, but
7 primarily New York photographers rent studios. That
8 would extend in my experience to 98 percent of the
9 professional photographers in New York.

10 And so I rent studios when I'm in New York
11 or I would rent studios when I need to shoot in
12 New York. Otherwise, I use office or desk space of
13 friends and associates.

14 (Whereupon, Defendants' Exhibit 15
15 was marked for identification by the
16 Court Reporter.)

17 BY MR. MARDER:

18 Q Sir, do you have a profile on LinkedIn?

19 A I do.

20 Q Please take a look at Exhibit 15 and let me
21 know if that is a printout of your profile on
22 LinkedIn?

23 A I haven't looked at it recently. That is
24 one of my photographs that's at the top, and that's
25 a photograph of me, and I don't recall placing

1 either one of those there, but maybe Pam did. But
2 this appears to be a copy of my LinkedIn profile.
3 And it is dated 11/6/2019; so it would have been
4 printed recently.

5 Q I have a couple questions about this. I
6 just need a little clarification.

7 Do you see under "Experience"?

8 A Yes.

9 Q And do you see "PLUS Coalition, Inc."?

10 A Yes.

11 Q And below it it says "33 years"?

12 A Yeah. I don't know where that's coming
13 from.

14 Q And then do you see below that, it says
15 that you were the president of the PLUS Coalition
16 from 1986 to present?

17 A Yeah. I don't know what that -- where
18 that's coming from either. It's not something we
19 would have entered. But I do know, for example,
20 that the incorrect logo shows up on our LinkedIn
21 page and information frequently seems to get
22 scrambled.

23 But PLUS Coalition was founded in 2004. I
24 started working on the concept for PLUS Coalition in
25 1998, but I was not then an employee of the PLUS

1 Coalition. But my involvement goes back to 1998.

2 Where it says president, that could apply
3 to my photography company. In fact, I do think that
4 what's missing from this printout -- it just hasn't
5 printed out correctly -- are the names of the
6 companies that go with each one of these things.

7 You might visit my LinkedIn profile and let
8 me know. I say that because oftentimes when you
9 print out a web page, it scrambles the information.

10 Q And then, below that, sir, is an entry
11 which says "President, Sedlik Consulting and
12 Copyright Expert Witness Services."

13 Do you see that?

14 A Yes.

15 Q What is that entity or organization?

16 A It's not a separate business entity. I'm
17 curious to see what it actually says on my LinkedIn
18 page online because I don't want to rely on this
19 representation here.

20 Q You've never heard of Sedlik Consulting and
21 Copyright Expert Witness Services?

22 A No. I'm saying it says 1990 to present,
23 and I'd like to know, that time frame, is that
24 connected actually on LinkedIn with the text above
25 it, or is this an inaccurate representation? I

1 don't know the answer to that question.

2 Q So we have a laptop here at the table that
3 is connected to the internet. So I'm going to turn
4 this toward you.

5 Do you see the -- the web page that's in
6 front of you on the laptop?

7 A I do.

8 Q And does this appear to be a LinkedIn page?
9 We're going to take it step by step; so...

10 A Yeah, yeah. It does appear to be a
11 LinkedIn page.

12 Q And do you see the web address at the top?

13 A Yes.

14 Q Does the web address at the top of the web
15 page on the screen that we're looking at match the
16 URL, the website page on the bottom of Exhibit 15?

17 A Yeah. But it's quite different in
18 appearance.

19 Q I didn't ask you that. I asked if the --
20 if it matches, if it's the same URL address?

21 A My bifocals miss that range, but --

22 Q Let me pull it closer to you.

23 A Okay.

24 Q Yeah, I have the same issue with glasses.

25 A Okay. Yeah, it does match.

1 Q It does match?

2 A The URL matches.

3 Q And do you see the picture at the top? Not
4 your picture but the picture at the top?

5 A The profile picture or whatever you might
6 call it.

7 Q Not your profile picture, but there's a --

8 A Banner.

9 Q Rectangular -- banner, thank you. I
10 couldn't think of the word -- there's a rectangular
11 banner picture at the top.

12 Do you see that?

13 A Yeah. I'm not sure why that's there.

14 Q Do you recognize that picture?

15 A I took that photograph somewhere in London
16 for an editorial client within the last three years,
17 and -- or within the last two years, and I don't
18 recall putting it on this page.

19 I believe I put it on my Facebook profile,
20 and perhaps somehow there's a connection between
21 LinkedIn and Facebook and it's ended up over here
22 or --

23 Q Where have you ever heard that LinkedIn
24 pulls information from Facebook to populate a
25 LinkedIn profile?

1 A Well, are they -- are those companies
2 connected?

3 Q I'm asking you, sir, where have you ever
4 heard that or read that?

5 A I'm just saying -- my testimony stands for
6 what it is. I posted this picture to my Facebook
7 page, and I don't know the relationship, if any,
8 between LinkedIn and Facebook. You know, Facebook
9 and Instagram are connected. And also, when you
10 post your -- a profile picture in one place, it
11 starts showing up on many other places as kind of
12 a -- whatever that word is -- avatar for you, even
13 on companies that aren't connected.

14 So...

15 Q That wasn't my question though. My
16 question was -- was a little different.

17 A Okay.

18 Q My question was, where have you heard or
19 read that LinkedIn pulls information from Facebook
20 to populate LinkedIn profiles?

21 A I didn't say that I had heard that. I said
22 that I posted that image on Facebook, and now it's
23 on LinkedIn and I don't really know how it's ended
24 up there.

25 Q And then the profile picture on the web

1 page, the LinkedIn page that we're looking at on the
2 screen, matches the one on the printout of
3 Exhibit 15, doesn't it?

4 A Yeah. And my Facebook profile picture.

5 Q And let's scroll down a little bit to where
6 it says "About."

7 Do you see that?

8 A Yes.

9 Q Can you read the "About" section on the
10 screen in front of you, please.

11 Out loud. Move it closer for you.

12 A (As read):

13 Jeff Sedlik is a photographer,
14 director, educator, publisher, and
15 consultant. He's a leading expert
16 on image licensing, copyrighting,
17 and the business of photography.
18 Sedlik is president of the PLUS
19 Coalition, past national president
20 of the APA.

21 Recognition: 2005 IPC
22 Photography Industry Leadership
23 Award; 2006, Photo Media Photography
24 Person of the Year; 2007, APA
25 Industry Advocate of the Year; 2008,

1 Honorary Master's Degree for
2 Professional Achievement, Brooks
3 Institute; and then CLIO, C-L-I-O,
4 Ozzie, O-z-z-i-e, Creativity Award;
5 Art Director's Club; Communication
6 Arts (10); One Show PDN/Nikon; One
7 Show again; "Art Direction"
8 Magazine.

9 And then specialties are listed below.

10 Q And that information appears to be
11 accurate; correct?

12 A Yes.

13 Q Now, let's scroll down on the laptop page
14 to look at where it says "Experience."

15 Do you see that?

16 A Yes.

17 Q And the first entry says PLUS Coalition
18 Inc.; correct?

19 A Yes.

20 Q And what's it say right below it?

21 A It says "33 years."

22 Q And that matches Exhibit 15; correct?

23 A It does, yeah.

24 Q And now let's go down to the bottom under
25 "Experience" under PLUS Coalition, and it says

1 "President"; correct? "1986 through present,
2 33 years, Los Angeles, California," on the screen.

3 Did I read that correctly?

4 A Yeah. I can see that there's a problem
5 here with some corruption of their database. For
6 example, the logo on the left is not my logo,
7 S-e-d-l; it's some other company's logo that neither
8 myself nor anybody employed by me nor anybody ever
9 working for me associated with this LinkedIn page.

10 Q What information do you have that LinkedIn
11 databases have ever been corrupted?

12 A That's a corrupt database right in front of
13 you.

14 Q Other than that?

15 A The other information there is not -- would
16 not be information that I would have entered or that
17 anybody working for me would have entered. For
18 example, 33 years at the PLUS Coalition.

19 Q So other than what's on the screen in front
20 of you, put that aside, what other information have
21 you obtained that LinkedIn's database has ever been
22 corrupted so that it shows incorrect information on
23 the computer?

24 A I don't have any other information other
25 than I'm looking at a logo that's not mine, never

1 been associated with my account, and is, as the
2 result of database corruption, showing up on my
3 account.

4 Q So is it your testimony, sir, that if we
5 were to send a subpoena to LinkedIn and obtain the
6 IP address where the information came from to create
7 this LinkedIn address, it would not come back to a
8 computer that you owned or had access to at the
9 time?

10 A It would -- first of all, knock yourself
11 out on that subpoena.

12 Secondly, I would have entered that I began
13 working for PLUS in 2004; I would not have entered a
14 date that was -- that would result in some kind of
15 33-year thing.

16 Certainly my business, when I started doing
17 business, would have been back then as a
18 photographer. But I would not, did not, have not
19 entered that information. So it's showing up
20 incorrectly.

21 And if it were to show that I entered
22 information, it would not show that I entered
23 incorrect information; it would show that the
24 information that I entered is not accurately
25 represented on the LinkedIn page.

1 Q Now let's scroll down a little bit further.
2 And it says right below that (as read):

3 President, Sedlik Consulting and
4 Copyright Expert Witness Services.
5 Did I read that correctly?

6 A Yes.

7 Q Have you ever heard of Sedlik Consulting
8 and Copyright Expert Witness Services?

9 A When I work as a consultant, I -- my
10 company is called Sedlik Consulting, but it's not a
11 separate business entity; I just refer to it as
12 Sedlik Consulting.

13 Q Well, even if it's not a formally created
14 entity, have you ever told anybody or written to
15 anybody that you are affiliated with Sedlik
16 Consulting and Copyright Expert Witness Services?

17 A That is a title that I believe that I could
18 have entered. I don't recall entering it, but it
19 accurately describes part of what I do, among my
20 many other business activities.

21 Q Now, below that, it says "Professor,
22 ArtCenter College of Design."

23 Do you see that?

24 A Yes, sir.

25 Q And we talked earlier about your position

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1 with the ArtCenter and how long you've been there.

2 Now, under ArtCenter College of Design and
3 the title "Professor," it says "January 1994 to
4 present."

5 Do you see that?

6 A Yes.

7 Q And by the way, we're referring to the --
8 excuse me -- to the -- the laptop in front of you;
9 correct?

10 A Yes.

11 Q Now, in 1994 you did not have the title of
12 professor at the ArtCenter College of Design, did
13 you?

14 A No, I would not have had that title. It's
15 my current title. And in the interface for
16 LinkedIn, you enter the company that you work for.
17 It asks you when you started working for that
18 company and when you ended at that company, and it
19 asks you what your title is.

20 Q What was your title at the ArtCenter
21 College of Design in January of 1994?

22 A I don't know. I earned that title along
23 the way, as I testified earlier. I was probably
24 "teacher." At least that's what the students call
25 me.

1 Q Further down on your LinkedIn page, there's
2 an entry that says "Faculty, American Law Institute,
3 2016 to present."

4 Do you see that?

5 A Yes.

6 Q What is the American Law Institute?

7 A They conduct CLE courses for attorneys and
8 I have been asked I think on three occasions to
9 teach courses. And when they gave me my name badge,
10 they call me faculty, and when they address me, they
11 call me faculty. So -- and I will continue to do
12 that when asked.

13 I do -- as part of what I do, I frequently
14 speak at law firms -- I'm sorry -- at law schools
15 and help -- and I'm a guest speaker in classes in
16 which attorneys are taught about copyright and
17 licensing, and that's what I speak on exclusively.

18 Q How many classes or courses or seminars or
19 workshops, or whatever they may be, have you taught
20 for the American Law Institute?

21 A I would have to check, but two or three in
22 those years.

23 Q How long was each of those? In other
24 words, how many minutes or hours?

25 A They're usually -- oh, I don't know. You

1 know, it's -- you can tell me how long the CLE
2 courses are. Are they a half day or three hours
3 or --

4 Q It's --

5 A -- I --

6 Q -- for me to ask the questions.

7 A Yeah.

8 Q I'm asking you, with respect to the -- the
9 classes, courses, workshops, whatever they may have
10 been, that you did for the American Law Institute,
11 how long was each one?

12 A I'm not sure, Counselor.

13 Q Do you hold any professional
14 certifications?

15 A I'm not certain about that. I know I've
16 taken courses, but I'm not certain actually about
17 certifications. There are no certifications in
18 photography other than for portrait photographers,
19 who get, like, a little ribbon they can wear and a
20 little plaque they can put in their window from the
21 Professional Photographers of America.

22 And so I'm not -- I'm actually not sure if
23 I have any certifications. There -- I don't believe
24 so. There is the chance that I do, that I've just
25 forgotten about it over the course of the years.

1 Q Do you hold any -- I'm sorry, I didn't mean
2 to interrupt you.

3 A "Over the course of the years," is what I
4 said.

5 Q Do you hold any licenses today currently
6 other than a driver's license or an occupational
7 license?

8 A By "occupational license," you're also
9 referring to, like, a business license?

10 Q Exactly.

11 A There are no licenses required in any of
12 the professions in which I'm involved; so no.

13 Q Have you ever been the subject of any
14 disciplinary action or censured by any professional
15 organization?

16 A No. I do tend to anger the professional
17 organizations that I'm involved with because I speak
18 my mind and I try and do the right thing, but I've
19 never been censured or disciplined.

20 Q Take a look at your CV, please, which we
21 have marked as Exhibit 2. And please turn to the
22 section that is entitled "Selected Articles
23 Authored."

24 A Yes.

25 Q Do you see that section?

1 A Yes, sir.

2 Q The first entry on that says "ASMP,
3 Professional Business Practices in Photography,
4 2008," and then it says "contributing author."

5 Did I read that correctly?

6 A Yes.

7 Q That refers to a chapter in book that you
8 wrote for the ASMP; is that correct?

9 A Yes. The ASMP asked me to write the
10 chapter on photography licensing practices. I wrote
11 that chapter, and I believe that it has gone into
12 later versions, but I haven't been asked to revise
13 it. So, should they ask me, I would.

14 Q How many pages was that book chapter?

15 A I have no idea, Counselor.

16 Q Next under that section, it says,
17 "United States House Judiciary Committee," and then
18 there's a title for work and date and other
19 information.

20 Do you see that?

21 A Yes.

22 Q "Orphan Works Dilemma" -- and do you see
23 that at the beginning of the title to the article?

24 A Yes.

25 Q Where -- does that have anything to do with

1 pricing for photography licensing?

2 A The question is so broad, it's -- I mean,
3 yes. The title has something to do with the
4 availability and identification of images and
5 therefore the pricing.

6 And I'm not trying to be smart in answering
7 your question; I'm just trying to carefully listen
8 to your words.

9 That -- it may be that pricing is -- and
10 value of images and copyrights is discussed in that
11 treatise. But I would have to read it to find out.
12 And certainly there is an indirect relationship to
13 having works identified so that they can be licensed
14 so that people can pay.

15 Q An orphan work is a -- an image that nobody
16 can identify who owns the copyright; is that
17 correct?

18 A In part.

19 Q And what's the other part?

20 A So an orphan work can be an image for which
21 the copyright owner can't be identified. It can be
22 an image for which the copyright owner can be
23 identified but is nonresponsive or their contact
24 information is incorrect or has passed away. And it
25 can be -- you said "image," but -- and that's

1 certainly relevant to this case, but could be any
2 type of creative work.

3 Now you know I'm listening to your
4 questions intently.

5 Q And I appreciate that.

6 A An orphan work can be a work for which
7 information that would allow the identification of
8 the work, the author, or the owner, which can be
9 separate entities, to be identified.

10 Q Now, moving down, it says "Photo District
11 News." Do you see that?

12 A Yes.

13 Q How many pieces have you written for the
14 "Photo District News"?

15 A I don't know. I think it was a monthly
16 thing and it was unpaid, and they would contact me
17 when they received a question having to do with
18 licensing or negotiations or copyright or
19 registration, and I would submit a -- you know, a
20 column to them. But I don't -- it was -- it was
21 quite some time ago.

22 Q It was basically answers to reader
23 questions?

24 A Answers to reader questions. "Ask the
25 expert," you know?

1 Q Now, below that, it says "In Focus."

2 Do you see that?

3 A Yes.

4 Q And what did you write for "In Focus"
5 magazine?

6 A At the time I was the chair, I believe, of
7 the copyright or advocacy committee for the
8 Advertising Photographers of America. I might have
9 started my contributions while I was the chair of
10 the Los Angeles chapter's committee handling
11 advocacy and then moved into the national -- you
12 know, they asked me to step up into the national
13 committee before they later made me president, and
14 in that capacity would write on topics to do with
15 copyright business, et cetera. But that was in the
16 '90s.

17 Q All of those were in the '90s?

18 A I'm pretty sure they would be in the '90s.

19 Q Below that, it says "Wraparound."

20 Do you see that?

21 A Yes.

22 Q When did you write for "Wraparound"
23 magazine?

24 A "Wraparound" magazine was another --

25 Q Let me stop you there. Just focus on the

1 question first. We'll get to what it is.

2 The question is, when did you write for
3 Wraparound magazine?

4 A To my best recollection, 1999 through 2004,
5 but I'm not certain about the years; I'm trying to
6 get you in the ballpark.

7 Q Fair enough. And that's all I needed for
8 that.

9 Now, please tell me what you wrote for
10 "Wraparound" magazine. Not what the magazine is; I
11 want to know what you wrote for them.

12 A I was the president of the organization at
13 the time; so I would have written the monthly or
14 periodic president's column addressing issues of the
15 day facing photographers. And I would have either
16 written or participated in writing anything to do
17 with copyright or licensing or related topics.

18 Q "Wraparound" was the monthly publication
19 for that particular organization?

20 A I believe so. And it went outside of that
21 organization as well. It was -- and I don't know
22 that it was monthly for its entire existence. In
23 fact, I think it started as monthly and went to
24 quarterly and existed for a while.

25 And then, when my presidency was over, I

1 think it might have gone away. But it was published
2 in partnership with a local entity.

3 Q What organization published "Wraparound"?

4 A I'm fairly certain that it was the
5 Advertising Photographers of America. I've been
6 involved with a lot of different nonprofits. That
7 one had "Wraparound" magazine.

8 Q Below that, the next entry says "APA/LA
9 News" magazine.

10 Do you see that?

11 A Yes.

12 Q Now, just focus on my questions; I want to
13 walk through it step by step. Okay?

14 A Okay.

15 Q When did you write pieces for "APA/LA News"
16 magazine?

17 A Could have been -- could have been in the
18 period 1997, going backwards to 1988.

19 Q And then "Photo Media," the entry below
20 that, "Get down to business," Fall 2000, do you see
21 that?

22 A Yes.

23 Q What publication was that?

24 A It was a trade publication that existed for
25 quite some time, and I don't believe it currently

1 exists. But they asked me to write -- I mean, it
2 appears that they asked me to write an article in
3 fall 2000.

4 Q You don't remember it, though?

5 A I don't. I mean, when I -- I could be more
6 organized about my articles, but essentially we have
7 a folder. If I write something and we remember to
8 print it, it goes in that folder, and then that's --
9 this list was made for.

10 Q The next entry says "IPTC Photo Metadata
11 White Paper 2007, Coauthor."

12 A Yes.

13 Q What was the subject of that white paper?

14 A IPTC is an organization that maintains --
15 creates and maintains standards for information
16 associated with photographs, and this was an article
17 on the importance of that information. It's
18 commonly called metadata, which means data about
19 data.

20 And I am on the IPTC's photo metadata
21 working group for many years and would participate
22 in writing white papers and participate in updating
23 their standards and whatever other work I can
24 perform.

25 And I also -- my nonprofit, the PLUS

1 Coalition, collaborates with IPTC, and they have
2 adopted our metadata fields for rights into the
3 global standard for expressing rights information.

4 And so I participate in part to make sure
5 that that's maintained and updated.

6 Q Have you written any publications in the
7 ten years prior to your becoming involved in this
8 case?

9 A I don't have any -- any publications in my
10 folder, and I can't recall writing, you know, an
11 article for a magazine or anything like -- or
12 writing a chapter of a book during that period.

13 Q So -- now you've mentioned -- excuse me.

14 You've mentioned chapters to books and
15 articles and magazines, but there are other types of
16 publications; so I need you to think a little more
17 broadly than that.

18 Have you written any publications within
19 the ten years prior to when you were retained to be
20 an expert in this case?

21 A Taking that out to its most broad, you have
22 Facebook posts.

23 Q Other than Facebook posts.

24 A Backing off of social media; right?

25 In my capacity as the president of the PLUS

1 Coalition, perhaps there have been emails that have
2 gone out to our members about this is what we're
3 doing.

4 Q I'm not referring to emails. I mean --
5 when I say "publication," we could be very
6 expansive --

7 A Right.

8 Q -- obviously.

9 But a publication would be something
10 written in a magazine, a book, a substantive blog, a
11 newsletter that goes out, a white paper, some sort
12 of academic paper, a document that is provided to
13 the government in support or opposition or to
14 educate the government on a position, things of that
15 nature.

16 A Hmm. I participate weekly in an informal
17 group called The Coalition of Visual Artists.
18 Doesn't -- they don't even want to accept a name,
19 but we call it that as a nickname. We meet weekly
20 by phone. And it's all of the different trade
21 associations representing photographers and
22 illustrators.

23 "All" is not the right word; it's many, and
24 it's the primary ones.

25 And we meet every week, and there are

1 frequently documents drafted in which I may suggest
2 edits, but I don't -- I haven't drafted the
3 documents. I might say, "You should say this" or
4 "You shouldn't say that," or "Here is my comment on
5 this or that."

6 So I can't really call them authored, but
7 there would be occasions where my organization name
8 or even my name as its representative might get
9 added to the bottom of a document because I said you
10 should put this sentence in there.

11 Q Can you identify any such publication?

12 A Not really.

13 Q Referring back to your CV, again, which is
14 Exhibit 2, please look down to the section titled
15 "Professional Societies."

16 Do you see that?

17 A Yes.

18 Q Now, we've already talked about your
19 position with the PLUS Coalition; so let's put that
20 aside for a second.

21 These other organizations, are any of these
22 by invitation only?

23 A Well, I don't know what that means,
24 Counselor. I'm not being silly. I mean, like,
25 American Society for Collective Rights Licensing,

1 I'm a founding director of the organization. I was
2 invited to sit on the board, you know, several years
3 ago, and -- so I suppose I was invited. People can
4 join the organization as a member but they are
5 invited to join. I guess they could join without
6 being invited.

7 Q Let me phrase it this way. And you raise a
8 good point; the question was not precise enough.

9 There are certain societies, for instance,
10 that it's an honor to become a member. And I'll
11 give you an example in my field, the American
12 College of Trial Lawyers you may have heard of.

13 A Yes.

14 Q To be a fellow of the American College of
15 Trial Lawyers is a distinguished honor. You may
16 have heard. One doesn't just write a check and
17 submit an application to become a fellow of the
18 American College of Trial Lawyers. That's an
19 example.

20 There are honorary societies. There are
21 organizations that will extend off invitations to
22 people because of their collective body of work over
23 years and bestow titles on them to join them.
24 Things like that.

25 There are other organizations where, for

1 instance, if you have been in the business for a
2 certain number of years and meet certain standards
3 or certain -- certain qualification requirements,
4 then you can join the organization.

5 Follow me so far?

6 A I follow you.

7 Q Okay. Are any of the organizations that
8 you've listed under professional societies those
9 types of organizations?

10 A American Society of Media Photographers, I
11 had to go through a panel of review to join. You
12 had to have been in business for such-and-such time
13 and they reviewed your work. I don't know if
14 they're currently doing that; I've been a member for
15 a long time. But there was a review to get into
16 that.

17 American Society of Picture Professionals,
18 I don't think they had criteria other than you had
19 to have a position in the marketplace -- or in the
20 industry.

21 Copyright Alliance, I was approached by The
22 Copyright Alliance and asked to join. You don't
23 just join The Copyright Alliance; there are -- they
24 specifically asked me to come in and work on their
25 academic advisory committee and on their copyright

1 office modernization working group. Invited in and
2 so attending those meetings and what have you.

3 PLUS Coalition we know.

4 So these other organizations you can join
5 as long as you're a professional in the industry.
6 But there are no certification agencies or -- the
7 types of organizations that you're speaking of,
8 there are none of those in the photography space.

9 And many of those in other areas, including
10 in the law, but probably not the ones that you
11 mentioned, are kind of faux. They invite you, and
12 you pay them some amount to get listed in some book
13 or on some website so that you can use that title,
14 but it's not real.

15 But the ones that you mentioned are real;
16 I'm not making any comment on those.

17 Q Have you ever had any of your opinions
18 become the subject of a Daubert challenge in court?

19 A All the time.

20 Q Have any judges or has any judge ever
21 excluded all or a portion of your opinions or
22 testimony in a case?

23 A I've survived every Daubert challenge,
24 every motion in limine to exclude my testimony.
25 There was one time when I left a case because the

1 client hired two experts with the exact same
2 expertise to opine on the exact same topics. And
3 the judge didn't like that, and the defendant didn't
4 like that. There was a motion and the client said,
5 "Which one of you wants to go?"

6 And I said, "I'm out of here. I have
7 things to do." So I left that case (indicating).

8 But I've never been disqualified or
9 anything like that.

10 Q And I just want to make sure that I'm
11 clear. And I understand the one case you mentioned
12 where the client said, "Expert A is going to testify
13 and not you" --

14 A No. The client asked me -- asked both of
15 us, which one wants to stay and which one wants to
16 leave.

17 Q Fair enough. So let's put that case aside.

18 A Okay.

19 Q My question is, has a judge ever issued an
20 order that even a portion of your testimony would
21 not be admissible in a case other than that case?

22 A Didn't catch that part of your earlier
23 question, if it was in there.

24 So every judge has ruled that I am a
25 qualified expert and may testify in whatever case my

1 opinions have been challenged, without exception,
2 for every year that I've been doing this, despite
3 many challenges.

4 There was one client who -- "VHT v. Zillow"
5 is the case. And I was asked to opine on contract
6 terms, and the opposing party challenged that,
7 because I'm not an attorney and it would be a legal
8 opinion.

9 The judge ruled that because of my
10 knowledge and expertise in image licensing that I am
11 competent to testify on the terms and conditions of
12 a contract. But the judge, as part of that
13 ruling -- and I'm saying this because you said in
14 whole or in part -- as part of that ruling, he said
15 that I may not testify on the relationships between
16 real estate brokers and real estate agents.

17 I'm paraphrasing, but that was what I was
18 not allowed to testify about in the scope of things
19 that my client had me talking about.

20 Now, my client did have an expert from the
21 real estate industry participating, and I had not
22 opined on those contracts. But as part of what the
23 judge ruled, that's what he ruled.

24 Q Is --

25 A Now, I can't remember everything, but

1 that's -- that's the one I remember.

2 Q You don't remember any other instances
3 where that has taken place, where a judge has
4 excluded a portion of your testimony or ruled it
5 inadmissible?

6 A The result of every one of these challenges
7 has been success in maintaining my testimony. And
8 if there was some kind of broad success in a judge's
9 ruling and then some narrow exception that I can't
10 think of right now, it's possible it occurred, but I
11 can't recall that.

12 Q Has anyone worked on this matter with you,
13 such as support staff or Pam or anybody else?

14 A Pam would have assisted me billing.

15 I have people proofread my reports --
16 proofread for typos, not develop any opinions or
17 anything like that.

18 The assembly of the exhibits, usually
19 because it's at the last minute, is often done with
20 assistance. But I draft everything, top to bottom.

21 Q Got it.

22 Probably be a good time to take a break if
23 the food is here.

24 MR. ALLEN: Yeah. Let me check to see if
25 the food is here.

1 MS. BOUGHN: I saw it walk in.

2 MR. ALLEN: You did. Okay.

3 THE WITNESS: Hopefully it didn't have
4 legs.

5 MR. ALLEN: Wow.

6 THE VIDEOGRAPHER: We're going off the
7 record. The time is 1:18 p.m.

8 (A lunch recess was taken from
9 1:18 p.m. to 2:02 p.m.)

10 THE VIDEOGRAPHER: We're now back on the
11 record. The time is 2:02 p.m.

12 BY MR. MARDER:

13 Q Mr. Sedlik, we are back from our lunch
14 break.

15 You ready to continue?

16 A Yes, sir.

17 Q All right. Approximately what percentage
18 of your income is derived from litigation support or
19 litigation consulting?

20 A I don't really track that, Counselor. I
21 work for PLUS. I have a publishing company. I
22 license my photography. I'm a licensing
23 representative for multiple photography estates.
24 And it all just blends in.

25 Q Well, sir, you're aware that this is not an

1 uncommon question in deposition litigation; correct?

2 A Not an uncommon question. I suppose.

3 Q You've been asked this question before in
4 deposition in litigation, haven't you?

5 A If you're saying, Counselor, that I should
6 dedicate the week prior to a self-audit to determine
7 what my revenue streams are and where they're coming
8 from, I don't have time for it.

9 Q Well, let me put it this way: In 2019, how
10 many cases have you been involved in as a consultant
11 or expert witness?

12 A Where I've actually put any time in?

13 Q Yes.

14 A Three or four, maybe.

15 Q And you brought with you today copies of
16 your invoices in this case; right?

17 A Yes, sir.

18 Q And I assume you issued those in other
19 cases; correct?

20 A Different invoices. I mean, but I don't
21 know if I've issued invoices in other cases. Some
22 cases I put in an hour in three months. Other cases
23 have me write reports.

24 Q Whatever it may be --

25 A Yeah.

1 Q -- you bill for your time; right?

2 A I bill for my time.

3 Q You expect to get paid?

4 A I hope to get paid.

5 Q All right. And you filed your 2018 tax
6 return, I assume?

7 A I did.

8 Q And did you take an extension or did you
9 file in April?

10 A I'm sure I filed on time.

11 Q Did you file earlier in the year, or did
12 you file later in the year?

13 A I -- I don't know, Counselor.

14 Q Okay.

15 A I filed my taxes; I don't like filing
16 extensions.

17 Q I would assume you have a sense, roughly,
18 as to what your income was in 2018; is that correct?
19 Gross number?

20 A Sitting here today, no, I do not.

21 Q You have no idea in --

22 A No.

23 Q -- any idea?

24 A No, no.

25 Q Is that right?

1 A I do not have an idea. And I actually
2 don't really pay attention to it.

3 Q And you haven't had to list what your
4 income was in 2018 on any form?

5 A No, no.

6 Q So you can't even estimate a rough
7 percentage that you think your litigation support
8 business constitutes of your overall income?

9 A I do not pay attention to it, nor do I know
10 how much my wife makes. She's an award-winning
11 costume designer.

12 Q I didn't ask you about what your wife
13 made --

14 A I know. I'm just telling --

15 Q -- I'm asking about you. Hold on. Hold
16 on. Let me finish. Just want to make sure Paula
17 gets down everything we say.

18 A Okay.

19 Q My question has nothing to do with what
20 your wife makes. Okay? I'm talking solely about
21 you.

22 Is it your testimony here today that you
23 can't even provide us a rough estimate of the
24 percentage of your income derived from litigation
25 consulting or litigation support?

1 A That's right, because it's all done under
2 Jeff Sedlik Photography, and I don't pay attention
3 to it.

4 Q Is Jeff Sedlik Photography an entity?

5 A Sole proprietorship.

6 Q Specifically what classes have you taken at
7 any time during your life that related to how much a
8 photography license should cost?

9 A I don't know. I teach those classes. I
10 don't know about taking those classes.

11 I've issued thousands upon thousands of
12 licenses and I represent multiple estates where I
13 negotiate daily licenses to news organizations,
14 licenses to publishers, licenses to all sorts of
15 entities.

16 And I was the president of the Advertising
17 Photographers of America where I had regular
18 interaction with groups of photographers, talking
19 about how much they charge and how they determine
20 how much they're going to charge, and under what
21 circumstances they charge more, under what
22 circumstances they charge less, the value of their
23 licenses. It's just my area of expertise.

24 Q We'll get to all of that. I'm taking it
25 little pieces at time.

1 The question was what classes have you
2 taken dealing with that subject? We'll talk about
3 all the rest soon.

4 A I don't know of any classes that I could
5 take where I would learn something from somebody
6 else that I don't already know about licensing. Not
7 to sound egotistical, but that's just the case.

8 Back in school I took business classes. I
9 took a business curriculum at the University of
10 California at Santa Barbara, followed by taking
11 business and licensing classes at the ArtCenter,
12 similar to those I teach now.

13 And then, since that time, I have likely
14 attended workshops or symposia or seminars where
15 pricing is discussed, including pricing by stock
16 agencies, pricing by photographers, licensing
17 practices, that sort of thing. But I don't --
18 there's no course for me to go take.

19 Q Can you name any of those workshops or
20 symposia that you've mentioned that you may have
21 attended?

22 A Well, certainly I have attended the
23 conferences for the DMLA, Digital Media Licensing
24 Association. It used to be called the Picture
25 Archive Council of America for many years. I wasn't

1 able to attend this year, but for many years I've
2 attended those.

3 I've also spoken on licensing and licensing
4 practices at those and sat in on panels at those.
5 The Photo Expo -- Photo Plus Expo, which has nothing
6 to do with the PLUS that I work for, is the annual
7 convention of photographers, which I attend and
8 typically teach seminars at. But I have sat in on
9 my peers' presentations.

10 The Strictly Business seminar series or
11 event that was put on by the American Society of
12 Media Photographers, I was one of the presenters,
13 but in addition I sat in on the presentations of
14 others to listen to their perspectives.

15 The CEPIC, C-E-P-I-C -- forgetting what it
16 stands for -- is the equivalent of the DMLA but in
17 Europe. I have attended those annually except for
18 this year and last year, and there I attend seminars
19 on licensing where pricing is mentioned.

20 But -- I gained my expertise in the
21 mid-'80s and the '90s, and then after that day to
22 day working in licensing, both in my own business,
23 assisting others with their licensing, and acting as
24 a licensing representative. Long-winded answer.

25 Q Let me go back to my question, though, and

1 I appreciate all that. And the question is not
2 where did you develop all of your expertise, and
3 it's not all of the conferences that you attended.
4 The question is more narrow.

5 The question is, name the courses or
6 workshops or lectures that you attended that
7 discussed how to value photography licenses.

8 A I think your question was -- included
9 conferences.

10 Q I've just asked you a question, and I can
11 read it back to you --

12 A You said, "The question was," and you
13 referred to your earlier question, which was name
14 the conferences that you have attended, and I named
15 those conferences.

16 Q That was part of a question where I'm
17 trying to get you to focus on the courses or
18 lectures that you attended. So let me phrase the
19 question. Okay?

20 Name the courses or lectures that you have
21 attended that directly discussed how to value
22 photography licenses?

23 A I stick to my previous answer: I can't
24 name an actual -- names of the events, although some
25 of them might be listed in my CV; I'm not sure.

1 In addition to those, I should say that the
2 Copyright Office and the Patent Office and the
3 Department of Commerce have me come in to speak at
4 events on the use of technology and global -- in the
5 global licensing environment where licensing and
6 pricing is discussed. I'm a presenter but I also
7 sit through two days of -- one or two days of
8 presentations each time; I learn quite a bit there.

9 And then the Copyright Technology
10 Conference, we also discuss -- I present there; I'm
11 a moderator and a panelist there, but we also
12 discuss pricing issues related to photography. I
13 just can't recall names of events going back, even
14 to last year, like the name of the actual panel or
15 something. If you're asking that, I can't -- I
16 don't know it unless it's in my CV.

17 Q Have you ever taken any courses in
18 economics?

19 A Yeah, full slate of them at the University
20 of California at Santa Barbara, macroeconomics,
21 microeconomics.

22 Q Since you received your college degree,
23 have you taken any courses in economics?

24 A No, sir.

25 Q What was your degree in?

1 A My degree was a BFA in photography.

2 Q A BFA -- bachelor of fine arts?

3 A Correct.

4 Q And who was that issued by?

5 A ArtCenter College of Design.

6 Q Is that the only degree that you have?

7 A I have a master's of fine arts from the
8 Brooks Institute of Photography, which was awarded
9 for lifetime achievement in the craft. It's not
10 something that I attended school for, but they
11 select photographers -- or they used to select
12 photographers based on their mastery of the craft
13 and business of photography and award master's
14 degree based on that. And I have that.

15 I attended the University of California at
16 Santa Barbara so that I could satisfy the academic
17 requirements of a bachelor's degree, because at the
18 time the ArtCenter College did not offer those
19 academic courses; so it was a requirement to attend
20 somewhere else first.

21 Q And that's to get your BFA?

22 A In order to get the bachelor's you have to
23 have -- you have to satisfy the state's academic
24 requirements, which ArtCenter did not offer.
25 So they -- now they do have the full slate, but

1 previously you had to go somewhere else first, for
2 the first 60 years of the organization.

3 Q Have you ever been asked to peer review a
4 publication?

5 A Yes.

6 Q What was the publication?

7 A One of them is called -- well, I'm trying
8 to remember the names of books that I was asked to
9 review.

10 Q And I'm not talking about -- let me make
11 sure I'm -- we're clear, and I apologize for cutting
12 you off.

13 But when I say "peer review," I mean peer
14 review in the sense of prepublication reviewing of a
15 work --

16 A Yes.

17 Q -- not reviewing a book once it's
18 published.

19 A Right. The proposed text for the work
20 where the author or the publisher wants to contact
21 others to ensure the accuracy of the content of the
22 book.

23 One them is called -- I think it's "The
24 Photographer's Business Handbook" by
25 John Harrington, and I'm asked by the publisher to

1 review that before it comes out.

2 And then there's another author, his name
3 is Ted Crawford, C-r-a-w-f-o-r-d. Writes legal
4 texts related to the arts all the time, and I get
5 those with the request that I review and comment on
6 them.

7 The -- there's a couple more that I -- I'm
8 just having a difficulty remembering what they are,
9 but as new editions come out, I'm asked to review
10 and provide comments on them.

11 I'll think about it, try and come up with
12 those.

13 Q Got it.

14 Do any of the publications that you recall
15 that you've peer-reviewed relate to how you value
16 photographic licenses?

17 A Yeah. The John Harrington book is all --
18 it's the core of the book. And Ted Crawford's books
19 address that issue.

20 I mean, that's my area of expertise and
21 that's why people ask me to review.

22 Q You mentioned previously that you have
23 represented certain estates in negotiating licenses.

24 Is my memory right on that?

25 A Yes.

1 Q How many estates do you represent to
2 negotiate licenses for?

3 A Well, on the lunch break I was just hired
4 by the estate of Gene Trindl, T-r-i-n-d-l, a very
5 famous Hollywood photographer who passed away, and
6 they just confirmed -- confirmed my engagement as
7 their licensing representative. I've helped them in
8 the past with advice but haven't represented them.

9 By "representation," I don't mean legal
10 representation; I mean negotiating licenses for
11 usages requested by the media and various clients.

12 Q I totally understand that. Yep. You're
13 not a lawyer.

14 A I'm not a lawyer. Certainly there is --
15 there are legal issues in -- in, you know, dealing
16 with licenses and copyright registrations and all of
17 that, but when legal issues come up, I refer them
18 out to their attorney or other -- other attorneys.

19 I represent the estate of Phil Stern,
20 S-t-e-r-n, as their exclusive licensing
21 representative for all licenses.

22 I think -- to give you an idea of volume, I
23 think there were in the last two weeks maybe four
24 licenses negotiated for various usage in various
25 media.

1 I have represented the estate of
2 Leigh Wiener, L-e-i-g-h, Wiener, W-i-e-n-e-r, since
3 2006, negotiating all of their licenses. But I have
4 a time issue, I'm not really able to keep up with
5 that. So I don't think I'm going to continue with
6 them, but I have since 2006 -- 2005, actually; long
7 term.

8 Q So that's three: Estate of Gene Turnbull
9 or Trimble?

10 A Trindl.

11 Q The estate of Phil Stern, and then I have
12 the estate of Leigh Wiener?

13 A Wiener.

14 Q Wiener?

15 A W-i-e-n-e-r.

16 Q Any other estates?

17 A No. However, I'm frequently contacted for
18 advice on the value of usage in certain media based
19 on the license criteria and provide that generally
20 as a service, unless I'm asked to step in directly
21 and negotiate the licenses, which I will do.

22 But those entities are -- are situations in
23 which I am the exclusive person representing that --
24 all licensing for the estates. With --

25 Q With -- oh, I'm sorry, were you --

1 A I was done.

2 Q With respect to the estate of Phil Stern,
3 how many licenses, approximately, have you
4 negotiated for that estate?

5 A Hundreds, mid-hundred -- you know, 500 --
6 somewhere between 3- and 500, somewhere in there.

7 Q And of the approximately 3- to 500 licenses
8 that you have negotiated for the estate of
9 Phil Stern, how many of the licensees were media
10 organizations that owned multiple TV stations and
11 radio stations around the country with multiple
12 websites?

13 A I don't know. I'd have to go back through
14 to see if that circumstance has occurred before. I
15 mean, I could go on and comment on that question,
16 but I'm going to keep -- I'm going to just be quiet.

17 Q What are the other licensees that you can
18 remember, the categories of licensees that you can
19 remember with whom you've negotiated on behalf of
20 the estate of Phil Stern?

21 A Just because the most recent ones are most
22 recent in my memory, I licensed the use of two
23 pictures one time in a media company's newsletter
24 for \$6,000 fee for the use of the two images for a
25 one-time use within the last month.

1 I licensed the use of one image in the
2 "Wall Street Journal" for several thousand dollars
3 for a one-time use.

4 In the last month, I licensed the public
5 display right, which is questionable under
6 copyright, in -- to the Academy of Motion Pictures
7 for one image; I don't recall how much that was.

8 I licensed the use of an image in a
9 self-published book within the last few weeks.

10 Currently negotiating usage in various
11 documentaries, television shows, open -- open
12 matters where I'm going back and forth and
13 negotiating license fees based on criteria
14 associated with the license.

15 Q It's interesting stuff, and I have to ask
16 you, who was Phil Stern?

17 A Phil Stern is one of the great
18 photographers of our time. He was a rough and
19 gruff -- I think he was a Marine or ex-Army and hung
20 out with people like James Dean and Marlon Brando
21 and Marilyn Monroe and all these people and made
22 wonderful, wonderful photos of them.

23 He smoked a lot and he passed away within
24 the last six, seven -- no, probably about
25 eight years ago from emphysema, I believe. Great

1 man.

2 And so his family knew of me -- I'm fairly
3 well-known in the image licensing circles -- and
4 came to me and asked me if I would be their
5 representative.

6 Q How many of his photographs were
7 photographs of cats?

8 A Oh, I don't -- I don't know that.

9 Q Can you point to any? Can you remember any
10 at this time?

11 A I think a photograph of John Wayne with his
12 cat. I mean, unlike me, where I have photographed
13 cats and done work for -- involving photography of
14 cats and dogs and other animals for clients,
15 Phil Stern's focus was on celebrities. And he did
16 quite a bit of work for "Life" magazine.

17 And I recall cats being in his photographs,
18 but usually it's John Wayne holding his cat, walking
19 around in shorts and a cowboy hat sort of thing.

20 Q How many of the licenses that you
21 negotiated on behalf of the estate of Phil Stern
22 were negotiated with stock photo companies?

23 A I don't understand that question because
24 I'm not selling to stock photo companies; they're
25 distributors of images that would be doing what I'm

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1 doing for them. So I'm taking the place of the
2 stock photo agency in this picture.

3 Q Understood.

4 A Okay.

5 Q Now, with respect to the estate of
6 Leigh Wiener -- I'm going to start from the
7 beginning.

8 Who is Leigh Wiener?

9 A Similar story. Great photographer of the
10 '50s and '60s, '70s. And Hollywood photographer,
11 all celebrity stuff, Marilyn Monroe and -- well,
12 politicians too. JFK was one of his subjects.

13 And he -- I met him when I was 17 years
14 old. He gave me my first job in photography. He
15 was the first license I ever wrote as a 17-year-
16 old -- well, 16-year-old, actually.

17 And I was the set photographer on his show
18 called "Talk About Pictures," which was an NBC show
19 where all the famous photographers would come in and
20 talk about their work. And I was the set
21 photographer and he gave me my first break.

22 Bless you.

23 And so I wrote my first license to him, and
24 he shared a lot of -- he mentored me quite a bit.

25 And then, after he passed away, his family

1 came, because they knew of my involvement in the
2 image licensing world, and asked me if I would
3 represent their estate.

4 And it's very time-consuming. That
5 particular estate is very time-consuming; it's quite
6 active and a bit high maintenance. So I'm kind of
7 having to draw the line, because of my limited time,
8 on that particular client.

9 Q How many of the photographs that you've
10 negotiated for the estate of Leigh Wiener involve
11 photographs of cats?

12 A I don't know if any cats appear in the
13 pictures that I've licensed or not.

14 Q How many of the photographs that you've
15 licensed did you license to stock photo companies on
16 behalf of the estate of Leigh Wiener?

17 A I don't understand the question.

18 Q Sure. You mentioned earlier that the --
19 when I asked that same question about the estate of
20 Phil Stern, it didn't really make sense because you
21 were acting as the middleman, so to speak, like the
22 stock photo company.

23 Do you recall that --

24 A Yes.

25 Q -- exchange?

1 Would your answer be the same with respect
2 to the estate of Leigh Wiener?

3 A Yeah.

4 Q Now, you're familiar, I assume, with
5 Sinclair Broadcast Group?

6 A Somewhat familiar. I'm not an expert on
7 it, but I do understand from -- in the context of
8 this litigation, information I've learned, is that
9 it has multiple radio and television stations and
10 other interests.

11 Q What experience do you have negotiating
12 photography licenses with media companies similar to
13 Sinclair? And by "similar," I mean an organization
14 that owns quite a few television and radio stations
15 around the country and also operates websites for
16 them.

17 A We went through my client list, which is a
18 partial client list, and I mentioned at that time
19 I'd have to go back through and try to figure out
20 which ones I have transactions with, if I was forced
21 to do that.

22 But whether the subject matter is cats or
23 any other subject, no matter who the licensee is,
24 licensing considerations in terms of the criteria
25 are the same. And stock photography companies, for

1 example, treat these various entities, whether
2 you're a sole proprietor or a significant
3 corporation, the same, unless you develop a direct
4 account with them for licensing.

5 Q Name the media companies that you have
6 negotiated photography licenses with that are
7 similar to Sinclair in the sense that they own
8 multiple television or radio stations around the
9 country and operate websites for those television
10 and radio stations?

11 A I can't recall them, if any, and I think
12 it's irrelevant. But you're -- but I appreciate the
13 question.

14 Q By the way, where is your online portfolio?

15 A I pulled it down because somebody stole my
16 whole portfolio and put it up on their site.

17 Q Did you sue 'em?

18 A They were in China.

19 Q Did you at least send them a cease-and-
20 desist letter?

21 A I had a Chinese friend call them and write
22 a cease-and-desist letter. And I tried to do a
23 takedown notice, which is not something that is very
24 viable in China. Even though I do sit on the
25 copyright committee of the Chinese government, I was

1 not able to achieve that.

2 And so what I've taken to doing is, because
3 I'm not actively seeking commercial assignments,
4 I -- for some of my personal projects, which -- for
5 which I shoot for fine art purposes and sell fine
6 art prints, I have no need to put those up.

7 And then for other work that I just might
8 shoot for personal enjoyment or for licensing
9 purposes, I'll sometimes post it on social media,
10 and sometimes not.

11 Q Which social media sites do you post on?

12 A Instagram. I post some images on
13 Instagram.

14 Q In this case one of the components of
15 damages that the plaintiff is seeking is
16 disgorgement of profits from the defendants.

17 Are you aware of that?

18 A Yes, sir.

19 Q Is it your intention to render an opinion
20 on that subject?

21 A I rendered an opinion in my preliminary
22 expert report on that subject. And the scope of my
23 intended testimony would be limited to that which is
24 in that opinion.

25 In other words, you asked about my training

1 in economics. Although I was one of those strange
2 people that loved my training in economics, I did
3 not choose to become an economist or an accountant,
4 and so I would leave those types of determinations,
5 calculations of attributable profits, to the
6 economists.

7 And I only looked at the -- the fact that
8 the sites -- the web pages on which these
9 photographs were published by Sinclair included
10 advertising that generated revenue that may have
11 resulted in profits to Sinclair.

12 Q What are the factors that go into
13 determining fair market value?

14 A In what context, Counselor?

15 Q In any context.

16 A So when you're talking about the fair
17 market value of a couch, it's different than talking
18 about the fair market value of a photography
19 license. And my expertise is in the valuation of
20 photography licenses.

21 Q What are the basic economic principles that
22 are involved in calculating the price of something?

23 A As I mentioned --

24 MR. ALLEN: Objection. Form.

25 MR. MARDER: What's the problem with the

1 form, Rob?

2 MR. ALLEN: Vague. It's --

3 BY MR. MARDER:

4 Q You can answer.

5 A Again, my expertise is only in the area of
6 photography licensing.

7 Q You mentioned earlier, though, that you
8 took some economics courses in college, and so --

9 A In 1979. Think about that. 1981, '80 and
10 '81, macro and micro.

11 Q That was a long time ago?

12 A It was a long time ago, and I decided not
13 to pursue being an economist and became a
14 photographer and an expert in photography licensing.

15 Q As you sit here today, though, what are
16 some of the economic factors that you recall that
17 are important in determining pricing?

18 A In determining the price for photography
19 licensing, certainly the level of supply and the
20 level of demand are primary factors.

21 Q Does the market matter? In other words,
22 does the definition of the market matter?

23 A Well, that would be a subset of -- I mean,
24 the -- the demand of the market -- I mean, the
25 market for the work is based on the content of the

1 work and whether or not that content is desirable.

2 If the content is -- if there's a demand
3 for that content, and if it's not available
4 elsewhere or it's relatively scarce or limited, then
5 the pricing is affected by being able -- allowing
6 the seller to request more than -- than the seller
7 would be able to request in the event that whatever
8 the commodity is -- I mean, in this case we're
9 talking about photographs -- were broadly available,
10 the quality of the product, the accessibility of the
11 product -- accessibility in photography involves
12 being able to search for and find it and obtain
13 it -- and a whole host of factors behind that, such
14 as the customer service -- the level of customer
15 service involved in assisting people with obtaining
16 the license and managing the license, those -- those
17 sorts of factors.

18 Q Does the use that a photograph is going to
19 be used for affect the value of the license?

20 A Depends on the licensing model.

21 Q Well, let's say, just as an example -- not
22 in this case, but just as an example -- an author
23 wants to license a book -- a photograph for a book
24 cover.

25 Follow me so far?

1 A Yes, sir.

2 Q All right. And let's say the book is going
3 to be a bestseller by some famous author. So that's
4 one use.

5 And then let's say a second use is that a
6 person wants to license a photograph to use on their
7 personal blog that their friends read. That's a
8 second use.

9 You follow me so far?

10 A The second scenario or a second use that
11 you're talking about within this license that you're
12 talking about -- one license with different uses, or
13 are we talking about different licensing scenarios?

14 Q So you have one photograph and one
15 photographer. Okay? Follow me so far?

16 A Yes.

17 Q And there's an author in New York who
18 wants -- famous author who wants to use that
19 photograph on the cover of her next book.

20 You follow me so far?

21 A Uh-huh.

22 Q Is that "yes"?

23 A Yup.

24 Q And there's a photography in Boise,
25 Idaho --

1 A Or Boise, Iowa.

2 Q Which one is it?

3 A Idaho.

4 Q Isn't that terrible?

5 A That's all right.

6 Q Geography was almost as long ago as your --
7 your economics classes.

8 Boise, Idaho. There's a blogger in Boise,
9 Idaho --

10 A You said photographer; you meant blogger.

11 Q Yeah, blogger. Thanks.

12 Post lunch; so let me say it again.

13 You have this photographer in -- you have
14 this blogger in Boise, and 20 people read his blog
15 and he wants the same photographer's picture on his
16 blog.

17 Do those different uses change how much the
18 license fee would be for the blogger versus the
19 author in New York?

20 A Depends on the license model.

21 Q Let's say --

22 A There are license models for which the type
23 of media, subject to certain restrictions, does not
24 affect the pricing associated with the license.

25 Q Let's say it's a royalty-free license.

1 Would there be a difference in the price?

2 A There would likely not be a difference in
3 the price, but it would depend, in the particular
4 example that you gave, if the licensor had terms
5 that prevent the use of the photograph on packaging,
6 under a rights-managed license, which is an
7 occasional restriction, then -- I'm sorry -- under a
8 royalty-free license, then we couldn't follow
9 through with that licensing example because it
10 wouldn't be allowed.

11 But supposing that it was allowed, that the
12 restriction did not take effect -- or it was not in
13 place, then the price for using it on the blog
14 versus using it on the cover of the book would be
15 the same, unless the licensor offered different
16 resolution files for different prices, which is a
17 model that longer makes sense but is a holdover from
18 the old days.

19 So, for example, if you need a high-
20 resolution file to put on the cover of the book and
21 a low-resolution file to put on the blog, then the
22 pricing could be different. But the type of media
23 is not a factor in the royalty-free license except
24 for restrictions.

25 Q And how about with a rights-managed

1 license?

2 A With a rights-managed license, you have the
3 same photograph for two different uses and the --
4 the blog use, assuming that this blog is not a
5 highly trafficked blog -- you said it was some -- I
6 think you implied, you didn't really say it
7 explicitly, but let's say it's not a very popular
8 blog, there's not a lot of visitors -- your price
9 for that use on the blog in a royalty-free license
10 could be very low and on the cover of the book could
11 be thousands or tens of thousands of dollars.

12 Q You said "royalty free." Did you mean
13 rights managed?

14 A I meant rights managed, I'm sorry. I
15 swapped them in both of my descriptions. Thank you
16 for catching that.

17 In rights managed, the fee is most often
18 based on the scope of use and, as I mentioned in my
19 earlier testimony, the -- the type of media, the
20 size of reproduction, the geographic territory.
21 These can all be factors.

22 All of these licensing models are in flux
23 and have been since the early 2000s, and we don't
24 really know where it's going to go. There's new
25 licensing models coming up and old ones are being

1 eliminated or changing.

2 But for right now, for the moment sitting
3 here today and also in 2015, that would be the
4 story.

5 Q Can you identify any other media
6 organizations that are similar to Sinclair in the
7 sense that they own a large number of television and
8 radio stations around the country and operate
9 websites for them?

10 A I can't sitting here today. I'm a little
11 tired; otherwise I might be able to think of them,
12 but I'm not sure.

13 I mean, I had -- I had heard of Sinclair
14 tangentially through news articles in the past, but
15 I don't -- and also, if I'm in Seattle, I watch
16 KOMO, you know, but -- and probably unknowingly have
17 watched other Sinclair stations.

18 But I guess to directly answer your
19 question, I can't sitting here today name other
20 stations -- other -- other companies that own that
21 many stations. And I do think it's my -- my opinion
22 is that it's irrelevant to the determination of the
23 value of the license in this matter.

24 Q Can you identify even one photograph that
25 Sinclair has paid for a rights-managed license to

1 display on its various websites throughout its
2 company?

3 A What do you mean by identify?

4 Q Very simple. Well, maybe it's not. Maybe
5 it's a bad question.

6 My question is, you're here testifying
7 about a set of 50-some-odd photographs; right?

8 A Right.

9 Q You're aware that Sinclair has a lot of
10 television and radio stations; correct?

11 A Yes.

12 Q And that all or most of them have websites?

13 A I don't -- when you say "has a lot of
14 stations," I actually don't fully understand the
15 relationship of the stations with the corporate
16 entity. I know there's been some of that touched on
17 in the interrogatories and that it's an issue that's
18 still being explored by the parties, I suppose.

19 So I had to say that because you said "has
20 these stations." I don't know what the relationship
21 is, but I'm aware that they have multiple stations.

22 Q Can you identify even one photograph that
23 has been displayed throughout the Sinclair
24 television and radio organization -- in other words,
25 on all of their television, radio, websites -- where

1 Sinclair or any of its subsidiaries purchased a
2 rights-managed license in order to display the
3 photograph?

4 A I don't. I mean, if that's been produced,
5 I haven't reviewed it. I've received everything
6 that I've asked for, but I haven't received that. I
7 do know that I explored the websites of some of the
8 Sinclair stations that are mentioned in the
9 complaint and looked at photographs that were there,
10 but I can't identify them, and certainly I don't
11 know the licenses that were behind them, and I don't
12 think that they would be relevant to the licenses in
13 question or the usage in question in this matter.

14 Q Earlier I asked you if you could identify a
15 similar organization to Sinclair that operated a
16 large number of television and radio stations and
17 websites, and you said you couldn't as we sat here
18 today.

19 So if I were to ask you if you could point
20 to a photograph that was licensed with a rights-
21 managed license by such a similar organization,
22 would your answer be that you couldn't do that
23 because you don't know of those organizations?

24 A The information hasn't been presented to me
25 or I haven't been asked to review that information

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1 if it has been presented to me. So I don't have --
2 I have not reviewed information sufficient to
3 comment.

4 Q And you haven't gathered that information
5 through your own research or experience?

6 A Gathering corporate records that Sinclair
7 would not have any inclination to share with me
8 about --

9 Q I'm not talking about Sinclair. I'm
10 talking about other organizations. In other
11 words --

12 A I see.

13 Q -- looking at the universe of media
14 companies that own television and radio stations and
15 operate websites for them, can you identify even one
16 photograph that such an organization licensed with a
17 rights-managed license?

18 A No. But that doesn't mean that it's not
19 commonplace.

20 Q You don't know whether it is or isn't
21 commonplace; correct?

22 A It is the predominant licensing model in
23 the news industry.

24 Q You have no data that you can point to that
25 indicates that an organization such as Sinclair that

owns a number -- a large number of television and radio stations and operates websites for them has licensed a photograph to display on the websites with a rights-managed license; correct?

A I don't have that specific data. My experience and understanding is that the predominant rights model in the news industry is rights managed, and that's evidenced in addition by, for example, Getty Images.

They have a massive amount of royalty free, about 24 million images offered royalty free. They have, I think, 140- or 160 million images -- I think 159 million images offered rights managed for editorial use by news organizations. And when they license them, they license them rights managed.

But there are particular types of editorial licenses under the rights-managed model, and they might offer broad use under the rights-managed model. But that is a huge revenue source for Getty licensing to the news industry.

My understanding is that approximately 96 percent of their revenue is from -- is divided up between royalty free and editorial rights managed and that they're making no changes to editorial rights managed, which they say works very well for

1 their news organization customers. They just
2 announced that last week.

3 Q Are you familiar with a subscription-based
4 licensing model?

5 A Yes, sir.

6 Q Okay. Can you identify a media
7 organization similar to Sinclair that purchases
8 groups of photographs using individual rights-
9 managed licenses for each of those photographs
10 rather than through a subscription-based license?

11 A Are you referring to subscription royalty
12 free? Or subscription -- or some other form of
13 subscription?

14 Q Any kind. Any kind.

15 A It's a huge difference. Because a news
16 organization can have a contract with a stock
17 photography provider where there's an agreement for
18 a payment of a certain amount of money for limited
19 usage rights that are defined by criteria very
20 consistent with rights managed, where there's a
21 certain amount paid.

22 And if you stand back from that, you could
23 categorize it as a type of subscription, but it's
24 not really a subscription per se; it's a contract to
25 be able to use "x" number of images under a rights-

1 managed model for a certain amount of money, whether
2 that's monthly or annually or -- or whatever that
3 is.

4 Q Name one media organization that owns a
5 large number of television and radio stations around
6 the country and operates websites for them that
7 purchases images -- purchases licenses for images
8 using a rights-managed subscription basis?

9 MR. ALLEN: I'm going object to that
10 question as compound; it included language that is
11 confusing and vague with respect to --

12 MR. MARDER: Excuse me, Rob. Stick to
13 objection to form. You can't make a speaking
14 objection. If you have a problem with the form,
15 just say "form" rather than trying to coach the
16 witness.

17 MR. ALLEN: I'm not trying to -- just
18 trying to give you some information to help with
19 your next question. But I understand.

20 Objection as to form.

21 BY MR. MARDER:

22 Q Go ahead.

23 A Can you ask the question again, sir?

24 Q Sure. Name one media organization that
25 owns a large number of television and radio stations

1 around the country and operates websites for those
2 stations that purchases licenses to display images
3 using a subscription rights-managed model?

4 MR. ALLEN: Objection as to form.

5 BY MR. MARDER:

6 Q You can answer.

7 A I explained a moment ago that
8 "subscription" is probably not the right word to use
9 in that context.

10 Further, the -- a license for -- a license
11 taken out by -- for use of a photograph on one
12 domain does not extend to use of a photograph on a
13 different domain, whether you license from Getty or
14 other organizations.

15 Q That wasn't my question. My question was
16 for you to identify a media organization as I just
17 defined it.

18 Can you identify even one as you sit here
19 today?

20 MR. ALLEN: Objection as to form.

21 THE WITNESS: No. It doesn't mean they
22 don't exist; it just doesn't make any sense in the
23 context of the facts of the matter, the instant
24 matter, you know, and the facts that have -- the
25 facts of the matter as they occurred. It's not

1 relevant to the valuation of the license.

2 BY MR. MARDER:

3 Q Tell me all of the data that you've
4 collected about the demand for Lykoi cats -- cat
5 photographs from 2015 to 2019?

6 A Prior to my preliminary report, I -- well,
7 actually, prior to my preliminary report I searched
8 for Lykoi cat photographs existing in 2017 and noted
9 that there were very few relative to photographs of
10 other types of cats.

11 And then in my -- and in that -- oh, I
12 should add that the very few that were available
13 were of poor quality or pictured these cats in pet
14 shows with -- with, you know, somebody -- somebody
15 walking through the background with a coffee cup in
16 their hand sort of pictures, like candid photos.

17 And then, in my supplementary -- or
18 my sur- -- not my supplementary -- my surrebuttal
19 report, I included some information about the
20 availability of those images in that report. And
21 subsequent to that, I contacted three of the leading
22 providers of cat photographs and discussed with
23 them -- I called these three photographers and
24 discussed with them the availability of cat
25 photographs.

1 This was just to -- not for me to gather
2 the information, but for me to reconfirm the
3 accuracy of my opinions.

4 Discussed with these three photographers
5 the availability of Lykoi cat photographs in 2015.
6 All three photographers confirmed that these
7 photographs were very rare, of Lykoi cats, in 2015.

8 Q What are the names of those three
9 photographers?

10 A Preston Smith. Oh, I just blanked on
11 the -- the names of the three. It will -- it will
12 come to me, just give me time to answer.

13 Can I answer as we go here as soon as it
14 comes back in my head, or do you want to sit here
15 while I think about it?

16 Q Take a look at your report if that will
17 refresh your recollection --

18 A No. I said subsequent to my report.

19 Q Subsequent to your preliminary report?

20 A And to my rebuttal report.

21 Q I see. So you have reviewed material or
22 you have done further work since your surrebuttal
23 report was issued?

24 A It's reflected in my answer to you earlier,
25 where I said -- you said who have you spoken with,

1 and I said photographers and stock agencies.

2 Q So there is Preston Smith and who else?

3 A I need a few minutes to remember, but it
4 might take a little time. I will answer you before
5 the end of the deposition. I will not leave this
6 table until I recall the names.

7 Q Let's go off the record and give you a few
8 minutes so you can think about it.

9 THE VIDEOGRAPHER: We're going off the
10 record --

11 THE WITNESS: Okay.

12 THE VIDEOGRAPHER: -- the time is 2:53 p.m.

13 (A recess was taken from 2:53 p.m.
14 to 2:58 p.m.)

15 THE VIDEOGRAPHER: We are back on the
16 record. The time is 2:58 p.m.

17 BY MR. MARDER:

18 Q We've just taken a break so you could
19 stretch your legs and think a little bit.

20 Do you remember the other two names?

21 A On the way out of the room, I mentioned
22 their names. Preston Smith was the one I mentioned
23 first. Larry Johnson. And it's Katrell or Katris
24 is the third one.

25 Q How do you spell that?

1 A K-a-t-r-e-l-l or K-a-t-r-i-s, Katris,
2 Richard.

3 Q Why did you choose these photographers?

4 A They're known in that -- in that world, and
5 I've heard of them because I have shot cat food
6 advertisements and packaging, dog food
7 advertisements and packaging, sort of thing.

8 Q Now, you mentioned that you spoke to them
9 and confirmed that there weren't that many Lykoi cat
10 photographs out there; in fact, I think you said
11 there were very, very few in 2015; is that correct?

12 A Actually, what I said was that each of them
13 said that Lykoi photographs, because that was the --
14 the dawn of the breed was just a couple years before
15 that, that they were very rare.

16 Q Now --

17 A And I said, "Do you mean rare?"

18 And they said, "Very rare."

19 Mr. -- Larry -- Larry, I believe, said that
20 as an example, he has tens of thousands of cats that
21 he's photographed, and he has -- or tens of
22 thousands of cat pictures in his library, and he has
23 three Lykois, half a dozen.

24 Q Now, you would agree that the number of
25 Lykoi cat photographs deals with the supply side of

1 the equation; correct?

2 A Yes.

3 Q Let's talk about the demand side. What
4 data do you have to establish what the demand was
5 for Lykoi cat photographs from 2015 to 2019?

6 A Yeah. I don't have that data except for,
7 in the instant matter, it seemed that Rex Pictures
8 wanted -- well, it seemed that -- I'm sorry -- WENN
9 wanted these photographs, and subsequently Sinclair,
10 Amanda at Sinclair wanted these photographs.

11 They wanted them. I don't know about the
12 demand, but they -- when they -- if they -- if they
13 had other resources to obtain those photographs of
14 similar quality and subject matter, then they could
15 have gone elsewhere.

16 Q Other than the information you've acquired
17 through the discovery that's been produced in this
18 case from either side and from the Tennessee case,
19 do you have any other data addressing the demand
20 side of the equation for Lykoi cats?

21 A No.

22 Q Now, is the demand for Lykoi cat
23 photographs elastic or inelastic?

24 A Hmm. It would be elastic.

25 Q How do you define "elastic"?

1 A So your question to me was that, "Is the
2 demand elastic or inelastic?"

3 Q Exactly right.

4 A And so the demand would change over time.
5 For example, if an article came out somewhere about
6 how great Lykoi cats are, people could gain interest
7 in Lykoi cats and other organizations might want to
8 run articles on Lykoi cats, and all of a sudden
9 you've got demand for those images.

10 Q Let's move away from the facts of this case
11 and let's just talk generally --

12 A No, I -- I'm sorry, I didn't mean to cut
13 you off, but I was speaking generally. I guess I
14 said "article." But if, you know, some celebrity
15 was seen walking down a street holding a Lykoi, all
16 of a sudden, there would likely be an increase in
17 interest in Lykois and perhaps an increase in demand
18 for Lykoi photographs.

19 Q Let's move away from an answer that gives
20 an explanation using examples. Okay?

21 I'd like for you to give us the
22 definition -- the economic definition of "elastic
23 demand."

24 A It's demand that can change with -- based
25 on whatever factors might affect that demand --

1 might affect it.

2 Q Such as?

3 A Current events, or events that occur.

4 Q Anything else?

5 A Styles and trends.

6 Q Anything else?

7 A The economy.

8 Q Anything else?

9 A I'm sure I'm not thinking of everything,
10 but that's a good set.

11 Q That's all you could think of as you sit
12 here right now?

13 A Right now.

14 Q Do you know whether the demand for the
15 benchmark photographs that you used in this case was
16 elastic or inelastic?

17 A The benchmark photographs, I just selected
18 cat photographs.

19 Q Understood. My question, though, is do you
20 know whether the demand for those photographs was
21 inelastic or elastic from 2015 to 2019?

22 A I -- I was careful not to select a
23 photograph as a benchmark that had something special
24 about it, you know, like Bigfoot in the background
25 sort of thing.

1 Q That wasn't my question. My question deals
2 with elasticity.

3 Do you know whether the photographs that
4 you chose as benchmarks were -- whether the demand
5 for those photographs was elastic?

6 A I don't have that data.

7 Q How did you define the market that you used
8 when you were calculating the license fees that you
9 opined were the actual damages in this case?

10 A I used a fairly straightforward methodology
11 where I went out to the marketplace, selected three
12 cat photographs, and then obtained prices, averaged
13 those prices -- like three generic cat
14 photographs -- and averaged those prices to come up
15 with a market value for 2017, then rolled it back to
16 2015, and then calculated the value based on rights-
17 managed criteria for the license that was subject to
18 certain assumptions that were dictated to me and was
19 otherwise based on my knowledge and experience.

20 Q And I appreciate that. We're going to talk
21 a little more about that portion of the methodology.
22 My question is a little bit different.

23 How did you define the market for buyers of
24 the photographs?

25 A The generic benchmark photographs?

1 Q Yes.

2 A I found it irrelevant in the context of
3 image licensing. Whether somebody's doing an
4 article on potatoes and cats for, you know, a ski
5 lodge, just to think of an extreme example, or
6 they're from some other industry is not relevant to
7 any determination with respect to the value of the
8 licenses in this matter.

9 Q With respect to the actual photographs that
10 were taken by Brittney Gobble, did you define a
11 particular market for the buyers when calculating
12 your damages calculation?

13 A I was not asked to determine the value of
14 Brittney Gobble's photographs themselves. I was
15 only asked to determine the reasonable fair market
16 value of the license that would have been purchased
17 to enable Sinclair to make use of the photographs.

18 Q Fair point. It is after lunch for both of
19 us.

20 When determining the reasonable fair market
21 value for the license for the photographs taken by
22 Brittney Gobble that are the subject of this case,
23 what did you define the market of buyers to be?

24 A Not relevant to my methodology.

25 Q So your testimony is you did not define a

1 particular market of buyers when doing your work in
2 this case?

3 A I describe my methodology in my report. My
4 methodology involves anyone from any marketplace
5 seeking out the use of a photograph and then the
6 consideration of how -- what the supply is for that
7 type of photograph and whether it's rare or not or
8 scarce. And determining what the fee would be for
9 the generic photograph and then adjusting that for
10 the rarity or scarcity of the image.

11 It does not involve the type of analysis
12 that an economist might do when looking at lost
13 profits or by using a different sort of methodology
14 to look at the licensing picture in this case.

15 Q What data did you look at to determine the
16 different kinds of licensing models that were used
17 by media companies such as Sinclair when licensing
18 photographs?

19 A The fact pattern in this case rules out
20 subscription stock and royalty free and micro stock
21 and leaves only rights managed.

22 Q Why is that?

23 A I've explained in my report that there is
24 no subscription or royalty free, but that -- I'm
25 sorry; let me restate that -- that Brittney Gobble's

1 position in licensing -- or hypothetical position in
2 licensing this in a hypothetical transaction is
3 inconsistent with the application of subscription or
4 royalty-free stock, and that rights that she granted
5 in her license as communicated to WENN were -- did
6 not fit the profile of royalty free or subscription.

7 And further, she demonstrated categorically
8 that she was not interested in participation in the
9 subscription model after experimenting with it for a
10 brief period, and then defined rights-managed
11 criteria -- loosely, rights-managed criteria -- in
12 issuing her license to WENN.

13 Q I want to go back to my earlier question
14 because you didn't answer it.

15 My question was, what data did you look at
16 to determine the different kinds of licensing models
17 that were used by media companies such as Sinclair
18 when licensing photographs?

19 Your answer was, "The fact pattern in this
20 case rules out subscription stock and royalty free
21 and micro stock and leaves only rights managed."

22 My question wasn't your opinion in this
23 case. My question was what underlying data did you
24 look at to reach that conclusion?

25 A No. Your question that you just read back

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1 to me was what data did I look at with respect to
2 subscription and royalty free, I believe.

3 Q No. I'll read the question again.

4 What data did you look at to determine the
5 different kinds of licensing models that were used
6 by media companies such as Sinclair when licensing
7 photographs?

8 A Oh, in general. I misunder- -- I assumed
9 that you were referring to this matter.

10 And I did not look at that. And I believe
11 that when you asked that ten minutes ago, I said
12 it's irrelevant.

13 But I'll say I did not look at that data
14 because it's irrelevant.

15 Q So let me ask you a question, are you
16 familiar with -- with AP, for instance, the wire
17 service?

18 A Somewhat. I mean, they're on my -- my
19 working group with the IPTC.

20 Q And do you know what kind of a licensing
21 model media organizations use with AP to get
22 photographs?

23 A It's a form of -- it's a form of rights
24 managed.

25 Q And it is often a subscription model, isn't

1 it?

2 A I suppose you could call -- well, as I -- I
3 mentioned this earlier. There's a -- it's my
4 understanding that there is a contract between the
5 organizations that defines a fee and defines
6 criteria, but these are rights-managed licenses.

7 Q Have you ever looked at a subscription
8 contract between a media organization and the AP?

9 A I'm not sure about that. I doubt it. I
10 doubt that I would have access to that unless it was
11 relevant to one of the cases I've worked on. AP --

12 Q Have you ever --

13 A AP has not been a party to any case that
14 I've worked on.

15 Q Have you ever looked at the subscription
16 contracts between media organizations and Reuters?

17 A You're using this term, "subscription
18 contracts," and I just don't want to answer the
19 question "yes" or "no" because that would be -- that
20 would -- in doing so, I would have to -- it would
21 imply that I agree with the use of that term.

22 So let's just say I haven't looked at the
23 contracts between the organizations.

24 Q Fair enough.

25 You have never looked at any contracts

1 between a media organization and, for instance,
2 Reuters?

3 A No. While I have relationships with people
4 at AP and Reuters through the IPTC, I have not
5 looked at their contacts because we're talking about
6 metadata.

7 Q And you're aware that Sinclair had a
8 contract with WENN? And that's W-E-N-N.

9 A Yes, I'm aware of that.

10 Q What was the licensing model used by
11 Sinclair and WENN to obtain photographs?

12 A I would call it rights managed, but because
13 it -- because it had limited media usage to it, as
14 far as I know, you couldn't go put it in an ad, but
15 you could use it editorially; so it can't be royalty
16 free.

17 So it's rights managed based on access to a
18 library of images.

19 Q How many images was Sinclair entitled to
20 download from WENN each month under the contract
21 between Sinclair and WENN?

22 A I can't recall, but for some reason 10,000
23 is in -- is in my head.

24 Q And --

25 A I've read a lot of documents in this case;

1 I can't recall the number, but...

2 Q Do you remember what the fee WENN charged
3 Sinclair was?

4 A The number that comes to mind is 15,000,
5 but I don't have it memorized.

6 Q Okay. If it were \$15,000 -- that was over
7 what period of time, by the way?

8 A I mean, we could put the document in front
9 of me. I could --

10 Q Understood.

11 A -- tell you. But -- but I believe it was
12 a -- a monthly agreement.

13 Q And let's just use the 15,000 as -- for
14 purposes of an example.

15 A Yeah. I don't want to indicate a lack of
16 familiarity with this case; it's just not something
17 that I put to memory because I consider that whole
18 thing -- that whole side of things irrelevant.

19 Q If -- if the fee were 15,000 a month -- I'm
20 not saying it is, but just for purposes of an
21 example, if Sinclair paid WENN 15,000 a month in
22 order to have the right to download and use 10,000
23 images, how much would the charge be per image?

24 A It would depend on the number of images
25 actually downloaded.

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1 Q Let's assume they downloaded all 10,000.

2 A Then you just do the math, 10,000 divided
3 by 15,000.

4 Q And that would be the license fee per
5 photograph, in effect?

6 A Yeah. Which is something that was
7 terminated right away as soon as Brittney Gobble saw
8 that WENN was violating the license that she granted
9 them.

10 And so that whole contract between WENN and
11 Sinclair is irrelevant for that reason, and also
12 because, within a couple of days of when Sinclair
13 first used the images, they were notified that this
14 usage was not licensed and that there was a problem.

15 Q We'll talk a lot about those things in a
16 little bit.

17 A Yes.

18 Q But those don't really address the
19 question.

20 The question we're talking about is the
21 contractual relationship between those two, between
22 Sinclair and WENN.

23 Okay?

24 A Sure.

25 Q Now, let's talk about other subscription

1 agreements that Sinclair has with other media
2 organizations, other services like WENN. I'm sorry.

3 Are you familiar with any of the contracts
4 that Sinclair has had from 2015 to present with
5 other organizations that permits them to download a
6 certain number of photographs per month?

7 A It's been since -- the last time that I
8 reviewed production was some time ago. I'm
9 forgetting if Shutterstock was one of those
10 companies, but I'm not -- I'm not -- I couldn't tell
11 you, sitting here today. It's not that I didn't
12 review them; I just considered them irrelevant to my
13 opinions in the matter.

14 Q Does Getty offer a subscription model?

15 A I think we need to clarify here that the
16 prevailing prescription -- subscription model in the
17 stock licensing industry is a royalty-free
18 subscription model, and that if there is
19 subscription editorial by Getty, that that's not a
20 royalty-free subscription; that's a rights-managed
21 subscription.

22 Q Does Getty offer a rights-managed
23 subscription model?

24 A They may offer it to corporations, but in
25 your expert's reports, they were referring to

1 royalty-free subscription.

2 Q I didn't ask you about my expert's reports.
3 I'm asking about what Getty does.

4 The question is, as you sit here today, can
5 you testify under oath that -- whether or not Getty
6 offers rights-management -- rights-managed
7 subscription licenses for photographs?

8 A I've already testified on that today, and
9 what I explained to you was that a company can
10 arrange with Getty to have bulk licensing in place,
11 whether that's a textbook company or a news
12 publishing, et cetera, to have a bulk licensing
13 contract under a rights-managed editorial model.

14 And so the answer would be yes, but I just
15 don't know actually if they specifically call it
16 subscription.

17 Q And do you know what Getty's fee is for
18 that service?

19 A No. That's negotiated with each entity and
20 depends on the scope of use.

21 Q Is it fair to say that larger buyers have
22 negotiating power with sellers?

23 A Yes, for the images that they actually have
24 in inventory.

25 Q And in the stock photography realm, is a

1 purchaser -- in other words, someone -- let's say
2 someone goes to Getty's website and -- and sees some
3 photographs that they want to buy under a rights-
4 managed model.

5 Can the purchaser, the licensee, pick up
6 the phone and call Getty and try to negotiate a
7 lower price for the license?

8 A You can do that in any business, and yes,
9 you could do that if you chose to do that.

10 Q Is it fair to say that -- that all of the
11 stock photo companies will do the same thing?

12 A Many of them would. Especially if
13 you're -- if you're licensing large quantities
14 repeatedly in bulk and they want to sign up a new
15 customer.

16 Q For the benchmarks -- excuse me. For the
17 benchmarks that you used in this case, did you pick
18 up the phone and call any of the three stock photo
19 companies to try to negotiate a lower rights-managed
20 fee than what you put in your report?

21 A I used their standard fees. I believe I
22 did call them with questions, but I didn't want to
23 introduce the existence of a lawsuit into that
24 survey or any specific information about the
25 companies involved.

1 So I wanted to get their standard market
2 pricing that they offer to the public --

3 Q Okay.

4 A -- which I -- which I did.

5 Q So the answer is no, you did not negotiate
6 the fee down with any of them or try to negotiate it
7 down?

8 A I did not. I asked them for their standard
9 rates. I didn't say, "Charge me any higher than
10 what your standard rate -- your standard offering is
11 to the public, and to companies who come there and
12 license every day."

13 Q In the photography licensing world, are
14 photographs ever licensed for editorial use on a
15 royalty-free basis?

16 A Somewhat of an oxymoron, because a
17 royalty-free basis would be usage in any media for
18 all time, internationally. And so editorial use is
19 one type of media that it can be licensed for.

20 You know, the stock agencies right now are
21 gasping for their last breaths, many of them, and
22 they will call anything anything to try and make a
23 sale, in terms of changing their -- the words that
24 they call things on their websites and, you know,
25 competing with each other and competing with the

1 bigger players.

2 So if they call something royalty free
3 that's not, I -- I don't know what to say about it
4 other than they're just throwing stuff on the wall
5 and seeing what sticks. But an editorial license is
6 by definition not royalty free.

7 Q Bad question.

8 A I liked that question.

9 Q Yeah. I know you did.

10 Let's say a buyer wants to use a photograph
11 for an editorial purpose.

12 Can that buyer go out and license a
13 photograph on a royalty-free basis?

14 A That's a good question. The buyer can
15 license a photograph on a royalty-free basis, yes.
16 That would include being able to use it in editorial
17 and in all other media.

18 Q True royalty free?

19 A True royalty free. Things are in flux, as
20 I mentioned earlier.

21 Q And isn't it true, sir, that today media
22 companies can go out and license photographs for
23 their editorial use on a royalty-free basis pretty
24 regularly?

25 A I don't know that, the "pretty regularly"

1 part.

2 If you're asking me can they go out and
3 license photographs and only use them editorially
4 even if they have the right to use them for
5 anything, I would say yes, just not from
6 Brittney Gobble.

7 Q And we'll talk a lot more about Brittany in
8 a little bit.

9 A Yes.

10 Q You've mentioned some of the changes that
11 have taken place in the -- the world of photography
12 licensing and prices over the last few years with
13 the advent of digital cameras and everybody having a
14 phone today.

15 I suppose those are factors; is that right?

16 A Some, but those are factors.

17 Q From 2015 to 2019, what has happened to the
18 prices of stock photography?

19 A Well, there was 9.17 percent decrease in
20 Getty's pricing overall, and that's fairly
21 consistent with other players. They kind of follow
22 suit, and they watch the pricing at Getty and they
23 adjust their pricing.

24 So I said 9.17 percent without looking at
25 my actual tables, but every year we go in and price

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1 different usages for different -- just to monitor so
2 that we have that data in the background. And
3 it's -- it's a decrease due to competition but also
4 due to the need to maintain or create or increase
5 margins.

6 Q Now, when you say there's a decrease, are
7 you saying that from 2015 to 2016 and then from 2016
8 to 2017, et cetera, each year there's approximately
9 a 9 percent drop in the prices?

10 A No. In my report there's an exhibit that
11 documents my methodology for determining the 9.17.
12 I'm saying that approximately 9 percent decrease in
13 pricing offered by Getty Images.

14 And so what I did was I took my 20- -- what
15 would have been 2017 survey and then -- in
16 Sinclair's favor, actually, rolled it back to the
17 2015 prices without taking into consideration what
18 the price would have been in 2016, 2017, or 2018 for
19 relicensing.

20 Q Are you saying that photography licenses in
21 2015 were cheaper than in 2017 or 2018 or 2019?

22 A No, it's the opposite. Nine-point-
23 something percent decrease from 2015 to 2017.

24 Q Got it.

25 A So I took my 2017 survey and I adjusted it

1 for the -- let me look -- I'm speaking a little off
2 the cuff here. Can I look at my report --

3 Q Yeah.

4 A -- just to make sure I'm giving you correct
5 information.

6 Q Of course. Any time you feel like you need
7 to. That's why it's in front of you.

8 A Yeah, yeah. Doing that from memory and --

9 MR. MARDER: And let's go off the record
10 while Mr. Sedlik gets it out and looks at it.

11 THE VIDEOGRAPHER: We're going off the
12 record. The time is 3:27 p.m.

13 (A recess was taken from 3:27 p.m.
14 to 3:40 p.m.)

15 THE VIDEOGRAPHER: We are now back on the
16 record. The time is 3:40 p.m.

17 MR. MARDER: Just for the record, during
18 the break we -- we marked Mr. Sedlik's Exhibit H to
19 his report, preliminary report, as Exhibit 16.

20 Exhibit I we've marked as Exhibit 17 to the
21 deposition.

22 And we've marked Exhibit A to Mr. Sedlik's
23 preliminary report as Exhibit 18 to this deposition.

24 (Whereupon, Defendants' Exhibit 16,
25 Defendants' Exhibit 17, and

1 Defendants' Exhibit 18 were marked
2 for identification by the Court
3 Reporter.)

4 BY MR. MARDER:

5 Q Correct? And --

6 A Yes, sir.

7 Q -- you have those in front of you?

8 All right. Now, did you have a chance to
9 look at those exhibits during the break?

10 A I did, and I need to correct my testimony.

11 Q Please go ahead.

12 A So in my earlier testimony I had this
13 exhibit pictured in my head, as photographers will
14 do, and the -- in the market rate adjustment, 2017
15 versus 2015 exhibit --

16 Q For the record, can you just say which
17 exhibit number it is, please?

18 A It is Exhibit 17 -- instead of the columns
19 being presented in chronological order, they're
20 presented in reverse chronological order, and in my
21 head I had it pictured backwards when I was
22 testifying earlier.

23 So this time period is an example of a time
24 period in which, between 2015 and 2017, the price
25 increased from 1,940 to 2,000- -- from \$1,940 to

1 \$2,135 for the same use.

2 Similarly with the second use example, it
3 increased from 1,090 to \$1,200.

4 And so to back down the rates to what they
5 were in 2015, I decreased the actual damages, the
6 hypothetical license fee, by the average of
7 9.15 percent.

8 I did remember my earlier testimony.
9 9.13 percent was in there, recalled that back from
10 some time ago. But I decreased the damages by
11 9.13 percent.

12 Q Now I'm looking at Exhibit I, and I want to
13 make sure I understand this.

14 Exhibit I has a number of columns on it;
15 right? You see that?

16 A Yes.

17 Q The second column says "Reference Image."
18 Do you see that?

19 A Yes.

20 Q And then there's a number in that column
21 for each of the two rows.

22 Do you see that?

23 A Yes.

24 Q What is that number?

25 A It's the stock number of the -- of the

1 reference image to be able to look up that image and
2 track the price over time for different types of
3 usage.

4 Q So, if I understand your methodology
5 correctly, in order to make your price adjustments
6 that you talked about earlier and that you just
7 talked about, you compared the price of a single
8 image at Getty Images from 2015 to 2017 to see if
9 there was any difference?

10 A Every year we do that, but yes.

11 Q For this particular image?

12 A We have a number of sample images and a
13 number of different media descriptions. They --
14 these were representative examples, where I found
15 that there was a -- that I could decrease the
16 damages and should decrease it, in fairness, and so
17 I did so.

18 Q How many other photographs did you look at
19 to compare the price from 2015 to 2017 to see if
20 there were any changes?

21 A To come up with the adjustment for -- in
22 this case, I compared this one photograph and --
23 under these two different usages and used the
24 average of 9.15 percent.

25 Q Did you do any analysis to determine

1 whether there was a price difference for this image
2 from 2017 to 2019?

3 A I did this analysis in -- whenever I did my
4 preliminary report. So the answer would be no, I
5 was not looking at this analysis in 2019.

6 Q Your preliminary report is dated --

7 A Was it 2018?

8 Q Well, let's look at your preliminary
9 report.

10 Your preliminary report in this case was
11 submitted April 12th, 2019. Take a look at
12 Exhibit 8.

13 You see that?

14 A Got it.

15 Q So the question is, have you done any
16 analysis to determine whether prices in 2018 and
17 2019 were different from the prices in 2017 or 2015?

18 A No.

19 Q If I wanted to go back and verify your work
20 here and double check it, how would I do that?

21 A You could look at the examples that I've
22 provided where there are screen shots of pricing in
23 various years, and then run it against -- and
24 look -- and look it up in this table.

25 Q Other than the data we've just looked at in

1 Exhibit I, can you point to any other data in the
2 marketplace that says that stock photo prices
3 increased from 2015 to 2017?

4 A My observation of the pricing in the stock
5 industry is that it waffles.

6 Generally, any increase will be met a
7 couple of years later by a stepdown. And so
8 certainly competition is -- is -- is driving pricing
9 to some extent, but it's been waffling like this
10 over time. It will go down; it will go slightly up;
11 it will go down.

12 Q I appreciate that. My question was a
13 little different.

14 I'm asking you whether you can point to any
15 other data in the marketplace other than Exhibit I
16 that shows that stock photo prices increased from
17 2015 to 2017?

18 A To do a complete analysis of that would
19 require a very significant and expensive effort that
20 isn't commensurate with the scope of my work in this
21 project. It would -- all the work that I've put in
22 would even be more work than all the -- all the
23 hours I've ever put in in order to a full analysis
24 of the stock photography market. And so this is
25 meant to be representative and fair to the parties

1 in making this adjustment.

2 Q So the answer to my question is you cannot
3 point to any other data other than Exhibit I that
4 shows that stock prices increased from 2015 to 2017?

5 A This is consistent with my other
6 observations of the ebb and flow of the marketplace.

7 And to further explain, the report that I
8 did this pricing for was the WENN report and samples
9 that I took were for the WENN report, I believe.
10 And the pricing samples that I took were in 2017 for
11 the WENN report.

12 So that explains why it says 2017 there.
13 And I rolled it back to 2015 because that was the
14 period of time that was relevant on when it started.

15 If I wanted to be less -- I also could have
16 taken the price in 2016, the price in 2017 -- at
17 that time we didn't know that usage had continued
18 through 2018, I don't believe. I mean, now we know
19 it's been ongoing in social media, and this does not
20 reflect any damages for social media use. But I
21 just took it back to 2015.

22 Q I understand when you prepared this, and I
23 understand the timing of that. But that's not my
24 question. And I'm also not asking about your
25 anecdotal observations. I'm not discounting them,

1 but my question is not focused on that.

2 A Yeah.

3 Q The question is, as you sit here today, can
4 you point to any data that indicates that stock
5 photo prices increased from 2015 to 2017 other than
6 what you have in Exhibit I?

7 A Not sitting here today. That was the
8 question.

9 Q Yes. Okay.

10 You have indicated in Exhibit I an average
11 of 9.15 percent price differential.

12 A Yes.

13 Q What's the error rate for that?

14 A My -- my methodology here is fairly
15 straightforward: Sampling a couple of images over
16 time and not getting into a full survey that, as I
17 mentioned, would be a very significant undertaking.
18 And so I don't know what the error rate to those --
19 to those numbers are.

20 Q Was this a statistically significant sample
21 size? In other words, was your sample size
22 sufficient so that your results are statistically
23 significant?

24 A I would have to sample tens of thousands of
25 images, and it's just not practical.

1 Q The approach that you took here where you
2 looked at the price for one image and compared 2015
3 to 2017, is that approach generally accepted in the
4 photography community for determining the pricing
5 of -- the pricing change for photographs?

6 A There's no such thing in the photography
7 community. I have seen a stock photography expert
8 use it in another case. Because all these data
9 points would require significant -- well, I'm not
10 going to repeat my testimony.

11 Q No. I remember what you talked earlier.

12 A I just -- you know, I think that in many
13 instances you would just sample the market and come
14 up with the actual damages and maybe not adjust it,
15 but I felt that adjusting it would be fair to
16 Sinclair.

17 Q Are there any books or treatises or other
18 publications that you can identify that have used
19 this method to determine the price difference from
20 one year to another?

21 A No. There's not enough demand to drive
22 that kind of thing.

23 Q Do you know what a net present value
24 analysis is?

25 A No.

1 Q Do you know how to perform one?

2 A Not my job, no.

3 Q Can there ever be an implied sublicense?

4 A Under certain circumstances.

5 Q What are those circumstances?

6 A It's very limited. If I license you -- can
7 I give you an example to explain it? Is that okay?

8 Q First generally explain the principle and
9 then please give me an example.

10 A There are certain types of reproduction
11 that are required in order to enjoy the benefit of
12 the license that you receive, and those are
13 utilitarian in nature, and by industry practice they
14 are allowed and typically not considered to be
15 infringing activity, even though there might not be
16 an express sublicense granted.

17 But normally a license that would allow you
18 to license rights to others would need to be
19 documented and it should be documented in writing.

20 Q And now can you give me some examples of
21 implied sublicenses?

22 A Yes. I license you the right to use one of
23 my photographs on a poster only in the
24 United States, only 25,000 copies, only
25 30-by-40 inches. You then obtain a copy of the

1 image file from me and -- oh, let's take it -- let
2 me -- let me replace it with I've got a print and I
3 hand you that print and you're going to scan that
4 print. Not you. You're going to hand it to a
5 digital service bureau and they're going to scan it.

6 So you just sublicensed your reproduction
7 right to them to allow them to scan it for the
8 purposes of you fulfilling your license.

9 The scanning bureau hands back the digital
10 file to you; that's a reproduction. They store a
11 backup copy of it; that's a reproduction. You then
12 take it to the printer and they perform prepress-
13 type operations on that file. You are basically --
14 in contracting with the printer, you're sublicensing
15 to them the right to do what they need to do so that
16 they can print this poster for the ultimate goal of
17 allowing you to use your rights under that license.

18 And so the implied right to sublicense --
19 your question was a little different. You said is
20 there such a thing as an implied sublicense, and I'm
21 referring to an implied right to sublicense, is what
22 my -- my example is.

23 So now you're scanning bureau or -- or I'm
24 sorry -- your digital service bureau and your
25 printer have reproduced this photograph with your

1 permission in order to do this poster that I've
2 granted you the right to do but not expressly stated
3 that you have the right to scan that and print --
4 and give it your printer to make further duplicates.

5 Then they put it on a truck and the truck
6 distributes it, and -- and so there's distribution
7 and reproduction going on that I haven't expressly
8 described in the license that -- but that industry
9 norms consider to be allowable, even though I guess
10 I could turn around and sue you for it, but people
11 don't in general do that.

12 Q Are there any kind of situations where you
13 can have an implied sublicense to exhibit a
14 photograph on the internet?

15 A Can you throw one out there? I can --

16 Q So let me -- let me try to think creatively
17 for a second.

18 A Okay. Because I tried.

19 Q What about this: Someone I know just
20 recently sold a condominium. And when the realtor
21 came to them, my friend was all concerned and he
22 said, "I don't know how to take pictures of my
23 condo." And so the realtor said, "Don't worry. We
24 have a service we contract with, and so I'll get
25 them to come in and take the pictures." And they

1 were good, by the way.

2 So the photographer has an agreement with
3 the realtor to take pictures, but there's nothing in
4 that agreement that explicitly talks about the
5 realtor putting them in the MLS system.

6 Can there be an implied sublicense in that
7 situation?

8 A Have you been following all the litigation
9 on that example? That's "VHT v. Zillow," by the
10 way.

11 Q Talk me through it. Can there --

12 A I believe the court of appeals determined
13 no, that there was not an implied sublicense.

14 But in -- that's -- that's kind of a
15 complex example. I suppose that -- no, I mean,
16 in -- in those circumstances, usually the
17 photography company will have express provisions in
18 its agreement with the parties that's hiring it that
19 say here's what you can and can't do with an image
20 and here are your obligations.

21 Q Let's assume for purposes of this example
22 that those conditions are not in the explicit
23 license between the photographer and the realty
24 company, okay? Just for purpose of that.

25 And I'm not really asking what the court of

1 appeals, whatever it was, said.

2 A Right.

3 Q I want to know what your opinion is in the
4 industry.

5 Can there be an implied sublicense in the
6 context of -- where a realty company gets an outside
7 photographer to photograph real property, and then
8 the photographer puts those up on the MLS system?

9 I want to know, in your opinion, based on
10 industry practice, can there be an implied
11 sublicense in that situation, allowing the realty
12 company to do that?

13 A So you just said the photographer put it up
14 on the MLS. I think you said -- you wanted to say
15 the realty company put it up on the MLS.

16 Q Yes, thanks, I did.

17 A Okay. I think that the realty company
18 could very possibly get sued. It's just an area
19 where there's a lot of litigation around that, about
20 putting those images up on the MLS without an
21 express license from the photographer.

22 So there just happens to be dozens of
23 lawsuits, including attempts at class actions. And
24 I've been involved in some of them in the background
25 and in the foreground. So that example is not -- it

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1 was a great example, but it -- it's hard for me to
2 answer it, and also might jeopardize some of my
3 other cases. I would have to really think it
4 through a little bit. I need to take it out of the
5 real estate context.

6 Q Well, within the real estate context,
7 because I want to use that example because I
8 understand it --

9 A Okay.

10 Q -- clearly.

11 You know, I mean, it's an easy example for
12 me to understand here. I don't mean I clearly have
13 an understanding of the area.

14 So, using this example for a second, have
15 you rendered any opinions on that subject? You said
16 you were involved in -- in some of the cases.

17 Have you rendered any opinions yet on that
18 subject?

19 A Well, the VH- --

20 MR. ALLEN: Objection as to form.

21 BY MR. MARDER:

22 Q Have you testified to any opinions on this
23 topic in connection with any of the litigation you
24 mentioned?

25 MR. ALLEN: Objection as to form.

1 BY MR. MARDER:

2 Q You can answer.

3 A "VHT v. Zillow." And would you allow me to
4 just quickly look at my case list in my report and
5 I'll give you the other case?

6 Q Yeah. Did you say VHT?

7 A Yeah. "VHT v. Zillow."

8 Q Got it.

9 A Report. This will just take one second.

10 There are even attorneys who specialize in
11 these real estate photographer cases. It's a --
12 it's a pretty wild area.

13 Q I thought I was throwing out something
14 simple.

15 A Yeah, yeah.

16 In my list -- in my -- I'm looking at
17 Exhibit 8, page 7 of my report, which is a list of
18 my cases in the last four years preceding this
19 report.

20 And it says "In Re Multiple Listing Service
21 Real Estate Photo Litigation." Who would have
22 thunk; right?

23 Q It actually says that?

24 A It actually says that, yeah.

25 Q All right. So now that we have identified

1 it, can you tell me if you've -- if you've testified
2 to an opinion in that case on that topic?

3 A I think there's -- I might have testimony
4 in that case and in "VHT v. Zillow," which I'm --

5 Q I remember. That's --

6 A Actually, it's 8.

7 Q Yeah.

8 A Both very interesting cases.

9 Q And what was your opinion in that case on
10 whether -- those cases as to whether a sublicense
11 existed in that situation?

12 A Well, in the Zillow case, it went even
13 beyond that. MLS was involved, but it went beyond
14 that to Zillow, who was my client, taking the images
15 from the MLS -- or allowing people, third parties,
16 the public, to take images from the MLS and say, "I
17 like this."

18 And it would put on a special site at
19 Zillow where its customers could say, "Well, that's
20 a great toilet in that house that was for sale."

21 And I don't actually recall --

22 Q But again --

23 A -- the substance of my opinion in that
24 case. That wasn't really an MLS one.

25 Q I want to go back to in either one of those

1 cases or both of them.

2 What were your opinions on the subject that
3 you testified to?

4 A I testified on image licensing and the
5 value of licenses in those case, in general, and
6 what the agreements between the brokers and these
7 photographers, how you could reasonably interpret
8 those.

9 And I don't recall what my opinions were.
10 I mean, I recall the substance -- I mean, the topics
11 on which I was testifying, but I don't recall the
12 substance.

13 And this other one, I think -- I could
14 swear that it was called "Stevens v. CoreLogic," and
15 I just -- I don't see that case here, but this might
16 have been another name for it when they were trying
17 to get -- establish a class. But --

18 Q Okay.

19 A -- I'm sorry, I --

20 Q Let's move on from there.

21 Why do news media companies use wire
22 services or stock photo companies?

23 A For the most part, it's for access to a
24 pool of images as they are created so that the word
25 "new" in news is actually -- has some meaning when

1 they're reporting it. So they're -- they're tapping
2 into all the photojournalists who are out there
3 making images and almost in real time.

4 Q Is it reasonable for a news media
5 organization with a subscription contract with
6 either a wire service or a stock photo company to
7 conclude that the wire service or the stock photo
8 company obtained the proper license so that the
9 media company could use the image?

10 A I can answer that if you would just take
11 the word "subscription" out of it.

12 Can you just ask it with the word -- just
13 has a contract for a supply of images --

14 Q Sure.

15 A -- because I can answer it, and you will --

16 Q Sure.

17 A -- probably like my answer.

18 Q If -- if a -- is it reasonable for a news
19 media organization that has a contract with either a
20 wire service or a stock photo company to obtain
21 images -- is it reasonable for the news media
22 organization to conclude that the wire service or
23 the stock photo company would have taken the steps
24 necessary to obtain a license permitting the news
25 media organization to display the photograph?

1 A Yes, until they are informed otherwise
2 about the lack of a license or the lack of the
3 sufficiency of a license or the termination of a
4 license or the existence of potential or actual
5 litigation concerning the alleged license.

6 Q We've talked at various times today about
7 rights-managed licenses and royalty-free licenses.

8 Generally today, is there any qualitative
9 difference between the images that one can get with
10 a rights-managed license versus those with a
11 royalty-free license?

12 A There has been some developments in the
13 last week that really affect that answer that are
14 not relevant to the time period in which this
15 instant matter occurred; so I can talk about that
16 and I can talk about before that.

17 Q We'll talk about that in a little bit.

18 Let's take up until the beginning of
19 November, before -- before Getty's announcement and
20 what the other stock photo companies have done.

21 A Okay. The competition in the stock
22 industry drove an increase -- drove the -- the
23 distributors, the stock agencies, to seek out better
24 quality images to offer up as royalty free so as --
25 because they can -- let me finish the sentence -- so

1 as to be able to compete, draw more customers.

2 You know, they dropped their prices to
3 the -- you know, over time from the '80s into the
4 '90s and early 2000s to the point where they didn't
5 have a lot of room to go down further in prices, or
6 they had to -- you know, there's only so much give
7 there.

8 They can reduce their operational overhead
9 to maintain their margins; they can provide
10 customers with a better, easier way to access --
11 find and access content that they might want to
12 access; they can provide more -- they can reduce the
13 amount of friction involved in -- in obtaining
14 licenses, you know, but they didn't have -- really
15 have a lot of room on price.

16 So that's why the price is just like this
17 (indicating), you know, in my observation over --
18 over those interim years.

19 And now I just lost track of -- I want to
20 give you a more precise answer. I'm sorry.

21 Q I'll read back the question.

22 We've talked at various times today about
23 rights-managed licenses and royalty-free licenses.

24 Generally -- generally today, is there any
25 qualitative difference between the images that one

1 can get with a rights-managed license versus those
2 with a royalty-free license?

3 And then you said there's some recent
4 developments; and then I said exclude those recent
5 developments and let's just look at, let's say,
6 before November of this year.

7 A I think there's still a difference in the
8 level of quality of rights-managed images versus
9 royalty free in general. The real question is --
10 it's a side issue, but I'll just mention it -- is
11 does the consumer care? Does the licensee care
12 about that difference in quality, whether that is
13 licensing, composition, the use of color? Can they
14 see it? Does that have value to them?

15 And do they -- does it matter to them that
16 it's likely that many more entities are out there
17 using -- and potentially competitors are out there
18 using those royalty-free images, possibly in
19 competition with them, trying to sell similar
20 products or services or what have you.

21 And so I guess the direct answer to your
22 question is, if you look at the rights-managed
23 images versus royalty-free images, you do see a
24 difference in quality still, but it's not as great
25 as it has been in the past.

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1 In the past -- in the distant past -- I'm
2 talking about the late '90s, mid- to late '90s --
3 royalty free was clip art -- maybe it was late '80s
4 and early '90s -- clip art. Two hands shaking, you
5 know. A tomato on a white background, you know.
6 Just things that were throw-aways, almost, and
7 that's changed so that the quality is getting to the
8 point where there's not as much as a differential,
9 but it's my observation, my personal opinion that
10 there's still a differential.

11 Q Over time, has subscription-based licensing
12 become more common?

13 A Here, we'll keep that to royalty-free
14 subscription, because we've been using the
15 subscription term applicable, trying to apply it to
16 rights managed.

17 We'll just say royalty-free, if you'll
18 permit me, subscription models have become much more
19 popular than they were in the past. And of course,
20 if you offer the customer lower prices, more images
21 for those prices, they're going to like that.

22 Q Have subscription-based rights-managed
23 licenses also become more frequently available over
24 time?

25 A I don't really follow that term, but if --

1 if -- so in general in my industry, "subscription
2 stock" refers to royalty-free licensing.

3 Q Is it possible to have a subscription-based
4 rights-managed photography license?

5 A In my testimony earlier today I described a
6 scenario that would be similar to a subscription
7 that you might even be able to label as subscription
8 because it's similar in operation, where one entity
9 enters a contract with a supplier where they get
10 rights in limited media or otherwise limited rights
11 for -- for content. But I would hesitate to call
12 that subscription.

13 Q Is it almost an oxymoron to say that a
14 rights-managed license is a subscription license?

15 A Yeah. I mean, I think I referred to that
16 earlier as a bit of an oxymoron. But from an
17 outside -- from a position outside the industry, you
18 could look at a deal between Getty and McGraw-Hill,
19 a publisher, where McGraw-Hill gets the right to use
20 images in books and in the promotion of those books
21 but not other rights, as a -- as a subscription in a
22 way.

23 Q I want to move on to something else. Let's
24 talk a little bit about your methodology in this
25 case that you used to determine the actual damages

1 in your report.

2 Okay?

3 A Okay.

4 Q What is the total actual damages that you
5 assert Brittney Gobble Photography suffered in this
6 case?

7 A The value of the license determined by my
8 calculations was -- I don't have it memorized.

9 Q And your report is also marked as
10 Exhibit 8; so please feel free.

11 A Yeah. Getting there.

12 The base actual damages of \$6,212,215.82.

13 Q And then you've applied a 3 to 5 times
14 multiplier to that?

15 A A range of 3 to 5 times for scarcity.

16 Q Now, to make the math easy for us after
17 lunch, can we say after applying the 3 to 5 times,
18 the range is approximately 18 million to 30 million?

19 A Yes.

20 Q As you sit here today, can you identify one
21 transaction -- even just one -- where a news media
22 organization paid between 18 million and 30 million
23 to buy approximately 51 images or 55 images of cats?

24 A No.

25 Q As you sit here today, can you identify one

1 transaction where a news media organization has paid
2 between 18 million and 30 million to license any
3 photograph?

4 A No.

5 Q As you sit here today, can you identify any
6 transaction in which a news media organization has
7 paid between 18 million and 30 million to license
8 any set of photographs?

9 A No.

10 Q The methodology that you used to calculate
11 the range of damages in this case, does it have a
12 name?

13 A No.

14 Q Is it described in any book or treatise or
15 other publication?

16 A No.

17 Q Is it generally accepted in the
18 photographic community as a way to determine a
19 photography license?

20 A I followed the -- I followed the -- my
21 methodology involves considering the usage that
22 actually took place, finding an equivalent license
23 in the marketplace, and making any adjustments based
24 on the characteristics of the image.

25 And that's -- that methodology is followed

1 with every rights-managed license.

2 Q Well, when determining rights-managed
3 licenses, I assume that you're not going to stock
4 photo companies picking images or a set of them and
5 then applying multipliers for a normal transaction;
6 is that fair to say?

7 A Right, that's correct. The word
8 "multiplier" would not be used regularly. It's a
9 term of convenience that I have applied to the
10 adjustment for scarcity of an image, in the same way
11 that when somebody comes to me as a licensing
12 representative for the Phil Stern estate and they
13 might go pick a generic image for a certain usage
14 for \$50, and I negotiate \$6,000 because of the
15 scarcity of the image, and I define the criteria for
16 the license, I'm -- I'm not going out and sampling.

17 But in this case I had to sample because I
18 didn't have any historical license to base it on.

19 Q Is the method that you used to determine
20 the value of the license fees in this case a
21 generally accepted method that's used to determine
22 license fees for photographs?

23 A I don't really get the -- get the question.
24 Because obviously you're not having to go -- if
25 you've got an actual image that somebody's

1 requesting, you don't have to go out to the industry
2 and sample rates in order to come to an average rate
3 and then apply an adjustment for scarcity; you offer
4 the rate, just like I -- in the example I just spoke
5 of.

6 You know, I had two images licensed for
7 editorial use only one time for \$6,000.

8 Q What is the error rate for your
9 calculations in this case?

10 A I don't know what the error rate would be.

11 I do know that in the WENN case the Court
12 accepted the methodology; in "Leonard v. Stemtech,"
13 they accepted the methodology; in "Under a Foot
14 Plant Company v. Exterior Designs," they accepted
15 the methodology.

16 Q And I appreciate that, but that wasn't my
17 question.

18 The three benchmarks that you used in this
19 case, what evidence do you have that they have ever
20 actually been sold for the license fees that you
21 have proposed in this case?

22 A I didn't propose any license fees in this
23 case.

24 Q Well, let me rephrase it.

25 A I mean, I didn't propose any license fees

1 for those benchmarks. I just obtained -- you could
2 say obtained sample license fees.

3 Q Take a look at Exhibit 16, please. I'm
4 sorry -- yeah, it's Exhibit 16, which is your
5 Exhibit H.

6 A I'm sorry.

7 Q Take a look to your right, see if it's in
8 that pile.

9 A 18. 16.

10 Q What is Exhibit 16?

11 A These are screenshots of three example
12 licenses.

13 Q And we're referring to these as benchmarks
14 in this case; correct?

15 A You are. I don't think I used that
16 terminology, but I don't disagree with that
17 terminology.

18 Q Fair enough. If we can just use that so
19 that we're understandings what we're referring to
20 during the deposition, that would be helpful.

21 A Yes.

22 Q So let's refer to the first benchmark,
23 which is on the first page of pictures.

24 Do you see that up at the top?

25 A Yes.

1 Q Looks like that was obtained from First
2 Light --

3 A Yes.

4 Q -- stock photo company?

5 A Yes.

6 Q And I see the various licensing options
7 that are listed there.

8 Did you choose those?

9 A Yes.

10 Q Were any of those based on assumptions?

11 A Yes.

12 Q Which ones?

13 A I'm going to Exhibit 8 to refresh my
14 recollection as to the particular assumptions
15 dictated to me in this case.

16 So general -- general answer is it's based
17 on all the assumptions, but I know you want a more
18 specific answer.

19 So if we drill down -- Exhibit K --

20 Q Assumption K?

21 A I'm sorry, Assumption K in Exhibit 8.

22 Q Any others?

23 A All of them indirectly.

24 Q Understood.

25 Now, looking at the first image in

1 Exhibit 16, which is the image obtained from First
2 Light, it shows a price of \$670 with the options
3 that you've included there; is that correct?

4 A Yes.

5 Q And I notice that you have this selected as
6 a full-size image, 5-by-8, 10 megabytes, 300 pixels
7 per inch, RGB; is that correct?

8 A Yes, sir.

9 Q Now, what is the industry standard for
10 pixels per inch when displaying a photograph online?

11 A I'm sorry, it does say full size, but
12 that's not the largest size; there's much larger
13 sizes available.

14 Images are typically displayed at 72 ppi,
15 but they're often licensed at this size so as to
16 maintain apparent quality when viewed at various
17 sizes on various monitors, especially as monitors
18 get larger and larger.

19 So this is toward the bottom end of the
20 sizes that are available, even though it's called
21 full size. I don't know why they call it full size.

22 Q Can you identify even one news media
23 organization that typically displays photographs on
24 their websites that are 10 megabytes and at 300 ppi?

25 A The images that they obtain from their

1 suppliers are 20 megabytes, 30 megabytes,
2 50 megabytes, depending on what the camera produces.

3 Q I'm asking specifically about how they
4 display them.

5 Can you name one media organization that
6 displays photographs on their websites that are in
7 the range of 10 megabytes and at 300 pixels per
8 inch?

9 A No. You don't display it at that size.
10 You license it and obtain it that size, and then you
11 just -- and you make multiple copies at various
12 dimensions from that second generation.

13 Q And with this particular image that you
14 used as a benchmark here, it's also possible to
15 license it at a smaller size; correct?

16 A At a smaller file size.

17 Q And it's also possible to license it at
18 fewer pixels per inch than 300; correct?

19 A I think there's two steps down from this.
20 I think this was the third-smallest size.

21 Q Now, next to 300 pixels per inch, it says
22 "RGB"; correct?

23 A Yeah.

24 Q What is RGB?

25 A Red-green-blue --

1 Q Correct. Red-green-blue? Did you say
2 red-green --

3 A RGB.

4 Q And the RGB standard is used by what
5 organizations?

6 A All organizations, but when you -- when you
7 print you print in CMYK.

8 Q And when you display online, what is the
9 standard that is used?

10 A You can use RGB.

11 Q What is typically used?

12 A I mean, I personally use RGB and very often
13 it's displayed in RGB.

14 Q Are you familiar with sRGB?

15 A Yeah. It's in the family of RGB. I don't
16 believe there's an sRGB option when you're
17 downloading from that site, but there might be. I
18 don't think that there is.

19 Q Are you sure?

20 A I'm not absolutely positive.

21 Q So looking at this first image -- excuse
22 me -- looking at this first image that we've been
23 discussing in Exhibit 16, what evidence do you have
24 that that image has sold for that price and with
25 those licensing options at any time?

1 A I don't have evidence of the licensing
2 history of that image.

3 Q With respect to the image below that, from
4 Getty Images, what evidence do you have that that
5 image ever sold for that price and with the
6 licensing terms set forth in that image?

7 A The same answer for all three images in
8 this exhibit.

9 Q That you have no evidence that they've sold
10 under those terms and prices?

11 A I can't get at the licensing history for
12 images from these private companies.

13 Q Understood.

14 I want to make sure I'm clear, though, that
15 as we sit here today, you don't have any evidence
16 that any of these three images ever sold at those
17 prices and those terms; correct?

18 A Correct. However, images routinely license
19 at those types of prices for that type of usage.
20 These were just three cat pictures that I felt --
21 even if -- even if I didn't use cat pictures as my
22 example, it wouldn't really matter here, but these
23 prices are normal prices for rights-managed usage
24 with these specifications.

25 Q What book or treatise or other publication

1 did you rely on when coming up with the methodology
2 you used to compute damages in this case?

3 A I didn't rely on a book or treatise. I
4 relied on -- upon my expertise and experience in
5 image licensing for decades.

6 Q Understood.

7 And we're finished with Exhibit 16, by the
8 way, for now; so you can go ahead and put that down.

9 I understand that scarcity was one of the
10 assumptions in this case; correct?

11 A It was -- well, let me double-check that.

12 Q Yeah. Let me just point you to
13 Assumption M. I'm not trying to fool you here, but
14 just take a look at Exhibit M -- take a look at
15 Assumption M.

16 A Yes.

17 Q Now, that was an assumption you were given
18 initially by Mr. Quisenberry?

19 A Yes. I did, however, look at the
20 marketplace in that time period, even though I
21 relied on the assumption ultimately and I don't have
22 an obligation to confirm the veracity of the
23 assumptions in this case, because they're handed to
24 me, I don't control them, I did on the subject of
25 scarcity, as you've seen in my supplementary report,

1 seek confirmation, even though it wasn't part of my
2 obligations or the service that I was providing in
3 this -- in this case.

4 And I further reconfirmed the accuracy of
5 my opinions and of -- using other means.

6 Q Are Lykoi cat images still scarce today in
7 2019?

8 A Yes.

9 Q And are they at the same level of scarcity
10 in 2019 as they were in 2015?

11 A Whichever way I answer that, you're going
12 to say, "What data or study did you rely on?"

13 But I'll tell you what I did recently to
14 verify my opinions as to the scarcity of Lykoi cat
15 images in the marketplace was speak to the three
16 photographers of cats who are the -- my
17 understanding -- the leading providers of cat images
18 and ask them directly if these were scarce images in
19 2015, and they responded that they were very -- very
20 rare in 2015, and explained that the cats were
21 relatively new in the marketplace.

22 And I asked them to tell me no if they
23 believed that they were not rare, and they all three
24 said they were very rare. I'm sure they would
25 confirm those statements.

1 Q I appreciate that, but that doesn't address
2 my question.

3 My question is addressed to whether there's
4 been any change in the scarcity from 2015 to 2019.
5 So I'll repeat it just so I'm clear. And I'm
6 going -- I'm going to rephrase it and repeat it.

7 I'm trying to focus on, from 2015 to 2019,
8 whether the level of scarcity has changed at all for
9 Lykoi cat images.

10 So what data do you have which indicates
11 the level of scarcity in 2015 for Lykoi cat images
12 compared to 2019?

13 A So I have the assumption, number one, but
14 then, secondly, I have the confirmation of my
15 opinions with three leading providers in that actual
16 space, that content space.

17 But I would -- if -- if you were to ask me
18 if I -- if it's reasonable to assume that Lykoi cat
19 photographs are not as scarce today in 2019 as they
20 would have been or were in 2015, I would agree that
21 it would be reasonable to assume that because the
22 breed has spread now and the cats are more
23 accessible. And they're at more shows and more
24 photographers would have access to them.

25 Q When was the last time that you went online

1 and actually did a search for Lykoi cat images to
2 determine how many are available online to license?

3 A The -- before submitting my surrebuttal,
4 and I included that information in my surrebuttal
5 with actual quantities found in the searches.

6 Q And you said that it's reasonable to assume
7 that they are less rare today than they were in
8 2015.

9 How much less rare?

10 A Well, this year, as of the time I did my
11 search -- I have to pull out my report --

12 Q Please.

13 A -- to refresh my memory.

14 This is Exhibit No. 9, surrebuttal report.

15 Page 13 of Exhibit 9, Section J. (As read):

16 Defendants' experts failed to
17 contemplate the relative scarcity of
18 Lykoi photographs in the
19 marketplace. The search at
20 gettyimages.com on June 21st, 2019,
21 using the word "cat" returned
22 400,000 -- over 400,000 photographs,
23 in contrast to search at
24 gettyimages.com on June 21st, 2019,
25 using the word "Lykoi" returned

1 17 photographs, many of which are
2 very poor quality and only six of
3 which are available for
4 rights-managed licensing. Quality
5 Lykoi photographs remain scarce
6 today and a suitable scarcity
7 multiplier is justified in the
8 matter.

9 And I would additionally point out that, of
10 those six available, that some of them were candids
11 with people, as I mentioned, with coffee cups in the
12 background or -- or what have you at cat shows, that
13 people just grabbed shots of them, very much unlike
14 Brittney Gobble's staged orchestrations.

15 Q Okay. I appreciate the answer.

16 Now, from 2015 to 2019, explain to us the
17 change in scarcity? In other words, by percentage,
18 how much less scarce are Lykoi cat images in 2019
19 compared to 2018, 2017, 2016, and 2015?

20 A I mentioned earlier that I don't have that
21 data, but that I confirmed -- I confirmed my
22 opinions by discussion with the three providers, who
23 all confirmed that Lykoi cat images were very scarce
24 at that time.

25 Q And you've given a range of a multiplier of

1 between 3 and 5 times the base license fee; correct?

2 A Yes.

3 Q How have you adjusted that over time from
4 2015 to 2019 to take into account the change in
5 scarcity?

6 A I provided the range of 3 to 5 times, and I
7 think the WENN Court selected 3 times as a
8 reasonable multiplier.

9 The images remain scarce, and as I do not
10 have the data to support a precise calculation, a
11 multiplier, I included that range. And that range
12 is based on my experience and observation. And I'll
13 speak further about it, should you ask.

14 Q So then you have not adjusted your
15 multiplier from 2015 to 2019 to take into account
16 the decrease in scarcity of the images?

17 A The photographers who I spoke with
18 suggested that 3 to 5 times -- well, two of the
19 three photographers suggested that a multiplier of 3
20 to 5 times is not enough to compensate for the
21 actual scarcity of the Lykoi photographs in 2015,
22 and that it would likely be much more similar to the
23 license that I mentioned earlier today where -- with
24 Phil Stern where similar photographs were licensed
25 for \$50 and I licensed it for \$6,000, for two; so

1 from a hundred dollars total to \$6,000. Because of
2 the scarcity of the photograph, it's a significant
3 multiplier.

4 I don't use the word "multiplier" when --
5 in day-to-day licensing practice. I use it for the
6 purpose of referring to this methodology.

7 But, nevertheless, I'm still comfortable
8 with the 3 to 5 times, even though these
9 photographers said it should be much more due to the
10 very scarce nature of the photographs then.

11 And my search in -- just a couple of months
12 ago showed the relative scarcity of Lykoi
13 photographs versus other cat photographs.

14 Q So the answer to my question is you've made
15 no adjustment to the 3 to 5 times multiplier from
16 2015 to 2019 to take into consideration the change
17 in scarcity?

18 A Based on my discussions with these
19 photographers more recently, I would say that I
20 would be more comfortable increasing that 3 to 5
21 times to 3 to 10 times.

22 However, in my conversations with
23 photographers over the last two decades, sitting and
24 speaking -- sitting down and speaking with groups of
25 photographers about pricing issues in photography

1 and discussing how to come to the prices for their
2 licenses, the 3 to 5 times is the most common range.

3 You know, some photographers would say 10
4 times or 20 times, but I treat those as outliers and
5 that's how I arrived at 3 to 5 times.

6 Q Mr. Sedlik, I appreciate that and you've
7 given me a lot of information about various things
8 in response to the question, but you haven't
9 answered the question.

10 A I wasn't evading the question. I got off
11 on a tangent. I'll come right back to your question
12 if you can restate it.

13 Q And I appreciate that. It's been
14 interesting hearing those other things, but my
15 question is very narrow.

16 Is it fair to say that you have made no
17 adjustment to the 3 to 5 times multiplier to take
18 into consideration the change in scarcity between
19 2015 and 2019 for Lykoi cat pictures?

20 A I think that the range accommodates -- the
21 3 to 5 range accommodates any adjustment that
22 might -- that might occur over that time period,
23 given the -- still what I would call fairly extreme
24 scarcity of Lykoi images. You know, perhaps it was
25 5 back then and it's 4 now, but 3 to 5 still is a

1 reasonable range.

2 Q So the answer is no, you've made no
3 adjustments?

4 A That's why I provided the range, because I
5 can't, in the scope of this engagement, do a
6 several-hundred-thousand-dollar survey, historical
7 examination to determine.

8 Q So the answer to my question is no, you've
9 made no adjustments; correct?

10 A And that the 3 to 5 range in my opinion
11 is -- is adequate and applicable and reasonable.

12 Q You've made no adjustment to the
13 multiplier; correct?

14 A To the multiplier range, correct.

15 Q I want to try to understand what factors
16 are to be looked at to determine the range for a
17 multiplier.

18 Can you describe for us what factors you
19 took into consideration when deciding the range of
20 the multiplier in this case?

21 A I just answered that question in my ranging
22 answer a moment ago as to how I came up with a range
23 of 3 to 5 times that I generally apply to cases of
24 scarcity -- cases where scarcity is involved.

25 Q And what factors would indicate that the

1 range should be, for instance, between 5 and 8 times
2 the base?

3 A It very well could be, but because the
4 majority of the respondents in my survey over a
5 20-year period, in speaking with these groups of
6 photographers, fall into 3 to 5, I'm sticking with 3
7 to 5 even though certain circumstances might go much
8 higher than 3 to 5.

9 Q Now, your survey said -- the size of your
10 survey, you said, was three photographers; correct?

11 A No. Hundreds of photographers I mentioned
12 that I have sat down with over more than two decades
13 discussing pricing. I just described that whole
14 thing to you.

15 Q Describe for me, sir, the conversations
16 you've had with these hundreds of photographers
17 where you discuss using a multiplier of a base
18 license fee to determine an appropriate license fee?

19 A I testified earlier that I typically don't
20 use that terminology when I'm actually licensing,
21 but I've already testified here today not ten
22 minutes ago that in traveling around the country and
23 the world, sitting with groups of photographers and
24 talking about their businesses, where their industry
25 is headed, what their licensing practice are --

1 practices are, and in discussions of what happens
2 when you're licensing, you know, relatively common
3 images, like two hands shaking or an image that
4 is -- where the supply is low, such as, you know, a
5 relatively scarce image -- it doesn't have to go all
6 the way to a picture of Bigfoot; it could be a
7 picture of a Lykoi cat where there's not many
8 available and yet somebody wants to run images of
9 Lykois. What is the range? How much might they
10 increase their price of a generic image over
11 something where there's more demand?

12 Q And where have you compiled this dataset of
13 information?

14 A I haven't compiled the dataset of
15 information; that's just the source of the 3 to 5
16 range.

17 Q So these hundreds of photographers that you
18 just mentioned who you say you've spoken to over the
19 course of your career, you haven't recorded the
20 ranges that they've given you; correct?

21 A No. And it's not individual conversations,
22 typically. I mean, I did have individual
23 conversations with the three cat photographers just
24 to confirm that I had applied a reasonable range.
25 And they all three confirmed that, two of which said

1 it should be much higher than that.

2 These are my other conversations where --
3 in my capacity as either the president of the
4 Advertising Photographers of America or as somebody
5 doing a lecture circuit for Advertising
6 Photographers of America or ASMP or other
7 discussions sitting with groups of photographers,
8 where I'm an invited speaker. I sit down in Denver
9 and we talk about the business and where it's going
10 and what their fears are and how -- how can they
11 price.

12 This is not price setting; this is a
13 discussion of their historical licensing trends and
14 practices. And when we get to the topic of when
15 they have a generic image versus an image that is
16 more rare, 3 to 5 times is the most common range.

17 In my own experience, I've been able to
18 charge significantly greater prices over time for
19 some of my more scarce images of people where the
20 quality of the image is unique and the person can't
21 be accessed anymore or what have you.

22 Q For instance, Marilyn Monroe. That would
23 be a classic example of a picture where -- of a
24 photograph where you couldn't access that person
25 again to take another picture?

1 A Or even with my own photographs --
2 Miles Davis, BB King, those type of people want to
3 do an album cover or an editorial.

4 The example I gave of -- last week with the
5 \$6,000 for two editorial -- for one-time editorial
6 use is another example.

7 Q What evidence do you have to conclude that
8 Sinclair or another hypothetical media company
9 similar to Sinclair would have accepted a
10 rights-managed license in this context along the
11 lines of what you're proposing?

12 A I don't have evidence that they would have
13 accepted it. I do have the scenario of a willing
14 buyer and seller and what the seller could
15 reasonably require of the buyer for the use of the
16 image.

17 And the -- the basis for the damages in
18 this case to get to the level that they are is I
19 took each of the stations and priced them as if they
20 had each separately licensed the images.

21 And until I hear -- but -- but in doing
22 that, I also provided pricing that showed what the
23 license fee would be if it was Sinclair only. And I
24 purposefully did that because I don't know what the
25 determination of the Court is going to be as to

1 whether the damages would apply to each station or
2 to Sinclair as the parent.

3 MR. ALLEN: Is it time for a break?

4 MR. MARDER: Yeah, it's good with me.

5 THE VIDEOGRAPHER: We're going off the
6 record. The time is 4:49 p.m.

7 (A recess was taken from 4:49 p.m.
8 to 5:08 p.m.)

9 THE VIDEOGRAPHER: We're now back on the
10 record. The time is 5:08 p.m.

11 BY MR. MARDER:

12 Q In the context of copyright violations,
13 have you heard of a cease-and-desist letter?

14 A Yes.

15 Q What is that?

16 A Well, one party can send an alleged
17 infringer or another party a letter that says stop
18 infringing and do not start again, and that's a
19 layperson's description of a cease-and-desist
20 letter.

21 And they will describe the offending
22 concept and -- that needs to be stopped, and
23 generally there's a threat involved, and sometimes
24 there's a demand involved, but not always.

25 Q Have you ever had anybody -- anybody steel

1 one of your images and use it without permission?

2 A Yes.

3 Q In those instances did you send a
4 cease-and-desist letter or have someone send it on
5 your behalf?

6 A I've sent them.

7 Q And do you believe it's a best practice to
8 send a cease and desist letter when someone uses a
9 photograph without authorization?

10 A From the photography industry's
11 perspective, we don't have a -- there's no standards
12 or practices around cease-and-desist letters.

13 If you want to ask me in general, I -- you
14 know, there are some entities -- there's a --
15 there's a lawyer today -- I guess I won't mention
16 his name -- who -- he just files five to ten cases a
17 week without speaking at all with or without
18 contacting these entities against whom he's filing.
19 And hopefully he was disbarred today, but we'll see.

20 But I -- I believe, you know, that it would
21 be more professional for him to communicate in some
22 way with the infringer. And whether that's a
23 cease-and-desist letter or otherwise, I can't really
24 say. But it would be my practice to send
25 cease-and-desist letters.

1 Q And I'm not so much talking about what a
2 lawyer does; you mentioned this lawyer who should be
3 disbarred.

4 But when a photographer believes that the
5 photographer's copyright has been violated, you
6 would agree that an appropriate step would be to
7 send a cease-and-desist letter?

8 A That is a -- a step that is available to a
9 rights holder.

10 Q And in fact, you believe that that is a
11 best practice?

12 A It's my practice.

13 Q Have you ever told anybody that you believe
14 that it is a good practice to send a cease-and-
15 desist letter when a photographer believes that
16 their copyright has been violated?

17 A I'm -- I'm -- I believe that I've -- I've
18 said that. Because I don't believe in -- in filing
19 suit without any contact whatsoever with a
20 defendant.

21 At the same time, if the defendant receives
22 information that would -- could or would lead them
23 to believe -- reasonably believe that there might be
24 a problem with a license or their use of an image, I
25 believe that they have a responsibility to take

1 action.

2 Q Why would Sinclair pay \$30 million to
3 license a group of photographs that Brittney Gobble
4 gave away to others for free?

5 A So we can talk about the fact that
6 Brittney Gobble received consideration and -- and
7 issued her licenses, as they were, with the
8 expectation of financial concern and the receipt of
9 consideration.

10 I don't consider that for free. She did
11 not request a license fee in exchange for those
12 usages, and she, as the copyright holder, had the
13 exclusive right to determine who she would allow and
14 when and under what conditions to make use of the
15 photograph -- her photographs.

16 And she has a long history of shutting down
17 people who use her images for free without her
18 permission.

19 Q Why would a hypothetical news media
20 organization pay between 18- and \$30 million to
21 license a group of photographs that the photographer
22 has licensed to others without requiring the payment
23 of a license fee from those others?

24 A In -- my hypothetical is built on a
25 standard license of standard photographs but

1 adjusted across multiple entities.

2 And so that \$30 million or that range that
3 you're talking about, you know, I -- as -- as is
4 described in my report, the damages would vary based
5 on the number of entities that are involved.

6 And so I treated each of these as separate
7 companies in my damages calculation. And in fact,
8 even companies such as Getty Images would require a
9 separate license for each and every one of those
10 domains.

11 I reconfirmed this yesterday by calling
12 them and saying, "If you have an entity that has
13 multiple subsidiaries, can you just license -- you
14 know, purchase one license and allow that and then
15 use those images across all those subsidiaries?"

16 The answer was, "Only if it's on the same
17 domain. Otherwise, you need a separate license for
18 each one."

19 So I'm confident that I took the correct
20 path in following that model. But, of course, there
21 will be a determination, I believe, in this matter
22 as to the relationship of the sub- -- of the
23 stations to the parent, and that will drive -- you
24 know -- I may need to revise my damages calculation
25 accordingly.

1 Q I appreciate all that, but that didn't
2 answer the question. And try to focus on the words
3 in my question.

4 Why would a hypothetical news media
5 organization pay between 18- and \$30 million to
6 license a group of photographs that the photographer
7 has licensed to others without requiring the payment
8 of a license fee from the others?

9 A They -- okay. As I mentioned, these
10 damages are per entity. So I'm not -- my damages
11 are calculated by -- are applicable to each station
12 as a separate entity, and so no one station is
13 paying \$30 million.

14 It's -- divided by all of the stations,
15 gives you a lesser number -- or station -- and I --
16 you know, I know there's been complaints about the
17 number of exhibits that I have and the length of the
18 exhibits, but they're in fact not redundant.

19 What I've done is to allow for a
20 determin- -- without recalculation of the damages, a
21 determination of what the damages are per station,
22 per image, per license, without having to
23 recalculate. In other words, multiple facets on the
24 same data.

25 So I just -- your question is difficult for

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1 me to answer. I'm not evading it. The combination
2 of those two things -- the free license I've
3 separately answered; the \$30 million, you're saying
4 why would one entity agree to that? And I'm saying,
5 my damages treat those as all separate entities.
6 Each entity, you know -- do the numbers. Divide it
7 by the number of stations.

8 And each -- and because of the rarity of
9 the image, there's a simple adjustment of the
10 standard license fee, times the number of years in
11 that media, times -- adjusted for the scarcity of
12 the image, is the license fee per station.

13 Q I'm not asking you about the facts of this
14 case; I'm asking you a hypothetical.

15 You follow me?

16 A Hypothetical, I can't -- I can't even
17 address the hypothetical.

18 Q Well, you're an expert witness in this
19 case, and fair market value is determined by
20 hypothetical buyer and seller; so I'm asking you a
21 hypothetical now.

22 And the hypothetical is as follows: Assume
23 you have a national media organization that through
24 subsidiaries owns and controls multiple television
25 and radio stations and operates their websites.

1 Why would that organization pay between 18-
2 and \$30 million for a group of photographs to obtain
3 a license from a photographer who has licensed those
4 same photographs to others without requiring payment
5 of any license fee?

6 A There's a disconnect with your -- the
7 preface to the question and the -- the tail end of
8 your question that makes it impossible for me to
9 answer.

10 You're asking me why, but Brittney Gobble
11 controls the circumstances under which she would
12 offer up a license of the images. She doesn't have
13 any licensing history for fees, and in order to
14 determine damages, we have to look to the
15 marketplace to see what a standard cat photograph
16 would cost for the same usage that occurred in this
17 case and then adjust it for rarity, adjust it for
18 the time period, and there we have our -- our
19 number.

20 Q And I didn't ask you about the facts of
21 this case; I asked you about a hypothetical.

22 Do I understand you to be saying that
23 you're incapable of answering my hypothetical today?

24 A I'm not refusing to answer it; I just can't
25 answer it because it doesn't make any sense to me.

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1 Q What evidence do you have that WENN
2 actually sent a kill notice to Sinclair?

3 A So I've read the kill notice, and I've seen
4 the testimony from WENN stating that they sent it to
5 all their clients, including Sinclair. But I did
6 not personally observe this because I wasn't
7 involved in the case at the time and not involved
8 with either party. So I'm just going by the
9 testimony.

10 Q Did you also read testimony from Sinclair
11 or see discovery from Sinclair where Sinclair denies
12 having received a kill notice from WENN?

13 A I'm aware that Sinclair denies receiving
14 the kill notice. I do know that they were contacted
15 by Brittney Gobble, contacted Scott -- I don't
16 recall his last name, I'm sorry -- Scott at Sinclair
17 to inform him that the usage was infringing almost
18 immediately after --

19 Do we need to stop for a second?

20 MR. MARDER: I'm sorry. I thought she was
21 just dropping the documents off.

22 Let's go off the record.

23 THE VIDEOGRAPHER: We're going off the
24 record. The time is 5:20 p.m.

25 (A recess was taken from 5:20 p.m.

1 to 5:22 p.m.)

2 THE VIDEOGRAPHER: We're now back on the
3 record. The time is 5:22 p.m.

4 BY MR. MARDER:

5 Q And I apologize; we had interruption.

6 My question previously to you was, did you
7 also read testimony from Sinclair or see discovery
8 from Sinclair where Sinclair denies having received
9 a kill notice from WENN?

10 And you were beginning to answer.

11 A I'm aware of that testimony. And I'm also
12 aware that Brittney Gobble contacted Scott --

13 Q Sistek?

14 A Sistek, thank you very much -- to advise
15 Sinclair -- or at least I believe it was KOMO at the
16 time -- that there was an issue; there was no
17 license; it needed to be taken down or her
18 information needed to be added.

19 He agreed to add it. And then, within a
20 day or two of adding it, the credit disappeared and
21 the information about the images was changed
22 somehow.

23 And at some later date they received a copy
24 of a subpoena, and that subpoena included 300-plus
25 pages of Sinclair alleged infringements. And

1 Sinclair responded to that subpoena; it was having
2 to do with the WENN case.

3 So I feel that they were on notice as of
4 receiving that subpoena, even though it -- even
5 though Sinclair was not named as a party.

6 Q You just provided a bunch of information
7 which is interesting but has nothing to do with my
8 question. My question was very direct and very
9 narrow. So please focus on it.

10 My question was, and remains, did you also
11 read testimony from Sinclair or see discovery from
12 Sinclair where Sinclair denies receiving the kill
13 notice from WENN?

14 A Yes.

15 Q You don't mention that in your report at
16 all, do you?

17 A No.

18 Q What evidence do you have other than
19 Lloyd Beiny's testimony that Sinclair actually
20 received the kill notice?

21 A I do not have evidence in that regard.

22 Q When someone takes a photograph using a
23 modern digital camera, such as a Nikon D800 or D810,
24 is the capture time of the image recorded in the
25 metadata?

1 A Yes.

2 Q And does that include the capture date?

3 A Yes. I should say that it may or may not
4 be correct.

5 Q It depends on the camera and whether the
6 time and date are correct in the camera?

7 A Right.

8 Q The time and date recorded in the image
9 would be the time and date in the camera; correct?

10 A Correct. You know, the exceptions would be
11 cameras where there's camera software settings that
12 would synchronize the date and time of the camera
13 when it's plugged into a computer or if the camera
14 connects to the web, but those are exceptions.

15 Q Understood.

16 And once the metadata contains the capture
17 time and date, unless someone manually goes in there
18 and changes those things, then that time and date
19 should remain there throughout the life of the
20 image; correct? Unless someone strips out the
21 metadata, and I'm not referring to that situation.

22 A So in a -- in a digital file of any kind,
23 there are system dates and then there are the type
24 of dates that would be recorded by the camera into
25 the file. These are recorded in different areas of

1 the file.

2 So when you open and close that file, it
3 changes the system date of the file so it -- you
4 know, you might have a creation date of January 1st
5 but then another creation date that says, you know,
6 November 2nd because the file was opened or saved or
7 accessed by a certain application.

8 So it's confusing when you look at the file
9 as to what the creation date is. But with that
10 exception, provided that you know the difference
11 between the system date and then the date that's
12 recorded in the -- in the header of the JPEG --
13 assuming it's a JPEG -- the answer is yes, that the
14 date is recorded and that date is not going to
15 change unless it is -- it is changed by an automatic
16 or manual process.

17 And by an automatic process, I mean you can
18 go into Lightroom -- I've seen your questions in
19 other depositions about Lightroom; you seem quite
20 knowledgeable -- and you can say, "Change all the
21 creation dates on this file -- on these 1,000 files
22 to ten years ago," and it will do it.

23 Q Have you ever used Shutterstock to obtain
24 benchmark photographs to calculate damages?

25 A I don't recall. It's possible that I have

1 where the facts of the matter would be consistent
2 with a royalty-free license. You know, the -- just
3 the -- if -- if it involved something that could
4 have, would have been a royalty-free license,
5 Shutterstock might be a place I would go, but it's a
6 subscription model.

7 It's -- I mean, it would be hard to use the
8 subscription model as a -- as a benchmark in the way
9 that I use the benchmarks. It might be something
10 that I would refer to.

11 Q Is it your testimony today that
12 Shutterstock does not offer rights-managed images?

13 A No, that's not my testimony today, but I
14 don't know that I've used, you know, Shutterstock
15 for that purpose.

16 Q Wouldn't the best benchmark for this case
17 be another photograph of a Lykoi cat?

18 A We could not use Lykoi cat photographs as a
19 benchmark because photographs of the same quality
20 didn't exist at the time that we took them, and also
21 I needed multiple samples from multiple sites and
22 could not identify Lykoi photographs at different
23 sites.

24 Q You didn't try to do that in 2019, though,
25 did you?

1 A These pricing samples are from 2017.

2 Q So the answer is you didn't do that in
3 2019?

4 A Correct, correct.

5 Q So if one were to go into some stock photo
6 companies and find rights-managed images, using your
7 approach, of Lykoi cat photographs that are of
8 similar quality, then those photographs would be
9 better benchmarks than the one you used; correct?

10 A I'm not certain of that because I don't
11 think that there are photographs of that nature.
12 Other people are not doing what Brittney Gobble
13 does.

14 Q Well, you didn't look for them in 2019, you
15 just testified.

16 So let's say --

17 A Right.

18 Q -- hypothetically one were able to go into
19 various stock photo companies and find images of
20 comparable quality of Lykoi cat photographs.

21 You would agree that those would be better
22 benchmarks than the benchmarks that you used;
23 correct?

24 A But those don't exist.

25 Q I'm asking you a hypothetical question,

1 sir.

2 If someone were to go to a Shutterstock --
3 let me rephrase it.

4 Hypothetically, if someone were to go to a
5 stock photo company website and obtain comparable
6 images to those shot by Brittney Gobble of Lykoi
7 cats in 2019, those would be better benchmarks and
8 closer benchmarks than the ones you used; correct?

9 A I think that ignores the facts of this case
10 and the nature of the photographs that were used
11 here. The reason that Sinclair chose and used this
12 selection of images was because of the narrative
13 aspect of the images.

14 Q You haven't answered my hypothetical
15 question, sir. I am not asking you about the facts
16 of this case; I'm asking you a hypothetical.

17 Do you understand? You follow me?

18 A I follow you, but it just doesn't apply.

19 Q So are you refusing to answer the question?

20 A It doesn't apply because of the nature of
21 the images used here.

22 Q Well, ultimately the judge decides what
23 applies and what doesn't.

24 You understand that; right?

25 A Yes.

1 Q You understand you're a witness in this
2 case; I'm a lawyer. Right?

3 A Yes.

4 Q So my job is to ask questions. And then,
5 if you understand the question, of course your job
6 is to answer it; correct? You follow me so far?

7 A Yeah.

8 Q And if you don't understand the question,
9 of course you'll let me know.

10 A I understand the question.

11 Q Okay. The judge ultimately at some point
12 later will determine what questions can be asked and
13 what can't for a trial.

14 You follow me so far?

15 A Yes.

16 Q Okay. So my -- my question is a
17 hypothetical. If one were able to go to one or more
18 stock photo companies and obtain images of Lykoi
19 cats of comparable quality to the ones created by
20 Brittney Gobble, would you agree that those would be
21 closer and better benchmarks than the benchmarks
22 that you chose?

23 A The content of the benchmarks -- I'm just
24 trying to think that through.

25 It's -- the content of the images

1 themselves, the ones against which the multiplier is
2 applied, accounts for not only the fact that those
3 images are Lykois but that they are Lykoi cats in
4 these fanciful -- for the most part, Lykoi cats in
5 these fanciful setups.

6 So the base benchmark photographs, whether
7 they're Lykois or not, I don't see how that affects
8 it.

9 Q So your testimony today is that if we find
10 images from stock photo companies that are of
11 comparable quality, including composition, including
12 creativity, including exposure, comparable quality
13 to the ones shot by Brittney Gobble, your testimony
14 today is that those aren't better benchmarks than
15 the ones that you chose of breeds that are not Lykoi
16 cats? Is that what you're telling us today?

17 A That's different than what -- than the
18 question you asked earlier, because you added in the
19 content of the images.

20 Q That's why I said "comparable quality."
21 The quality --

22 A Well, quality is --

23 Q Let me finish, sir. And maybe my question
24 wasn't clear. I want to make sure that we're
25 understanding each other.

1 Let's take an image today, in the
2 hypothetical, go to a stock photo company and you
3 find an image of comparable quality and content,
4 composition, lighting, creativity, all of those
5 things. Okay? And the cat in those photographs was
6 a Lykoi cat.

7 Would you agree that that photograph would
8 be a closer and better benchmark than the ones that
9 you used?

10 A So that I have clarity on that question, in
11 your hypothetical, we're assuming that, for example,
12 one of these Brittney Gobble images or a selection
13 of these Brittney Gobble images was actually
14 available but not Brittney Gobble's? With this kind
15 of what I would call narrative fanciful setups with
16 the pumpkins and the corn and whatever, you're
17 saying those are available and would it be more
18 appropriate to use one of those?

19 Q Yes.

20 A Yes.

21 Q So if one were to find a benchmark that was
22 not as creative as you said with the -- the props
23 and all the things that you say Brittney Gobble did
24 to make these photographs creative, if a benchmark
25 lacked those things, that would not be an

1 appropriate benchmark to use?

2 A It would be a less appropriate benchmark to
3 use.

4 Q Would it be an appropriate benchmark to
5 use?

6 A Can't really answer that with a "yes" or
7 "no" because, reasonably, Sinclair would not have
8 run 50 photographs of a Lykoi on a white background.
9 It wouldn't. So those are the photographs -- you
10 know, the nature of the photographs themselves is
11 part of the scarcity.

12 You know, I could see Sinclair running one
13 photograph of a Lykoi on a white background but not
14 50. White background, black background. The reason
15 why they ran as many photographs as they did --
16 well, there's -- actually, I'm sorry -- there's a
17 different quantity of photographs running on
18 different station websites; so I don't want to use
19 that number across the board.

20 But in any event, multiple photographs of
21 Lykoi cats in a gallery that are all kind of boring
22 on a white seamless would not make sense.

23 Q Were the articles that Sinclair ran with
24 the photographs articles on photography composition
25 and creativity?

1 A No.

2 Q I'm going to turn to some of your exhibits.
3 Why don't we just go off the record for a second and
4 I'm going to organize these things.

5 THE VIDEOGRAPHER: We're going off the
6 record. The time is 5:38 p.m.

7 (A recess was taken from 5:38 p.m.
8 to 5:45 p.m.)

9 (Whereupon, Defendants' Exhibit 19,
10 Defendants' Exhibit 20, Defendants'
11 Exhibit 21, Defendants' Exhibit 22,
12 and Defendants' Exhibit 23, were
13 marked for identification by the
14 Court Reporter.)

15 THE VIDEOGRAPHER: We're now back on the
16 record. The time is 5:45 p.m.

17 BY MR. MARDER:

18 Q Mr. Sedlik, take a look, please, at
19 Exhibit 19.

20 Do you see that in front of you?

21 A Yes, sir.

22 Q And is that your Exhibit M to your report?

23 A Yes. As we speak, I want to have an index
24 to the exhibits in front of me, which is not there.

25 Q There it is.

1 A Thank you, sir.

2 And that is Exhibit 10, index to exhibits.

3 Q So we're now looking at Exhibit 19. I have
4 a few questions for you. I want to start on page 1
5 of 275. And you can take the binder clip off
6 because we're going to look at the headings.

7 A Okay.

8 Q All right. The first column, you see where
9 it says "Photo No."?

10 A Yes, sir.

11 Q Where does that come from?

12 A Comes from table of photographs, Exhibit E.

13 Q And the license number, where does that
14 come from?

15 A Exhibit L.

16 Q All right. Take a look at Exhibit 20 in
17 front of you.

18 A Should I put the clip back on this, sir?

19 Q No. We're going to --

20 A Okay.

21 Q So kind of slide that over.

22 Now, Exhibit 20 is your Exhibit L; is that
23 correct?

24 A Yes, sir.

25 Q So under the "License No." column in

1 Exhibit 19 -- for instance, the first one, where it
2 says --

3 A Just one thing. This has notations on it;
4 so you might want to have this copy.

5 Q Yeah. I've circled the ones I was going to
6 ask you about. So let me just change that page out
7 real quick with a clean one.

8 A It's got the exhibit number on it.

9 Q Oh, that's right.

10 A I can ignore the notations. I don't think
11 there's anything secret here.

12 Q Well, let's -- if you don't mind, we'll --
13 and we'll re-mark it later, but let me just give you
14 a clean one. I don't think there's anything
15 significant there.

16 THE REPORTER: You can peel it off.

17 MR. MARDER: See if I can get it off.

18 Q There you go. So there's a clean --

19 MR. ALLEN: Do you need a pen?

20 THE WITNESS: No. I had a pen sitting out
21 here.

22 MR. ALLEN: We lose pens? Pen? No?

23 BY MR. MARDER:

24 Q Here's the remainder of Exhibit 20. There
25 you go.

1 Now, Mr. Sedlik, you just took a note,
2 worked on a note.

3 What was that?

4 A It's -- hang on one second. Make one more
5 note.

6 Q I want to make sure we cover whatever we
7 need to cover.

8 A Well, it just -- it seemed like we were
9 talking about elastic demand, and then you said
10 let's take a break in the middle of the discussion,
11 and I just wanted to circle back on it.

12 Is that -- I don't know that I had the full
13 opportunity to answer, but I'm not sure.

14 And then I made a note that says "2015
15 Lykoi benchmark," and then "read and sign."

16 Are we still on the record?

17 Q We are on the record.

18 A So I would like to read and sign.

19 Q We'll do that later.

20 A Since I forget saying that.

21 Q No. I don't recall ever cutting you off
22 from answering about elasticity.

23 So what do you want to say about elasticity
24 that you don't think you had a chance to say?

25 A I thought you were pursuing a line of

1 questioning, and then you said let's take a break.
2 You did not cut me off. I don't really have
3 anything to --

4 Q Okay.

5 A I -- I believe that I testified that the
6 demand was inelastic. And that's my impression.
7 And I just don't recall my -- my testimony. I think
8 that's what I said. So we can leave it there.

9 Q So you believe the demand for the cat
10 photographs was inelastic?

11 A Not affected by the price for the
12 photographs. You adjust the price up or down, it's
13 not going to change the demand for the cat
14 photographs.

15 Q Mr. Sedlik, during the break what research
16 did you do on elasticity?

17 A I didn't do any research.

18 Q Really?

19 A Really.

20 Q Because that's completely different from
21 what you said earlier.

22 A I said it was inelastic earlier.

23 Q During the break, tell me exactly which
24 subjects about this case you discussed with
25 Mr. Allen.

1 A I didn't discuss the subjects -- which
2 break?

3 Q During any break today.

4 A I didn't discuss --

5 Q And you can look at me --

6 A Okay.

7 Q -- not Mr. Allen.

8 A I didn't discuss the case with Mr. Allen.

9 Q At no time?

10 A At no time today.

11 Q All right. Well, the record will reflect
12 what your answers were earlier about elasticity and
13 your understanding of elasticity.

14 A That's fine.

15 Q What was the third thing wrote down on
16 your --

17 A I wrote "Read and sign," and I wrote "2015
18 Lykoi benchmark."

19 Q And what did you mean by "2015 Lykoi
20 benchmark"?

21 A When you were asking me about benchmarks,
22 I'm unclear as to whether you were saying 2019 or
23 2015.

24 Q I was saying 2019.

25 A Okay. And so my -- my -- my testimony on

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1 that is that in 2015 there were not Lykoi
2 photographs available, to my knowledge.

3 Q Please take a look at Exhibit 20, and have
4 Exhibit 20 on one side of you and Exhibit 19 on the
5 other, please. There's Exhibit 20. Right there.

6 A Yeah.

7 Q Looking at Exhibit 19 -- I'm on page 1 of
8 275, Column 2, where it says "License No."

9 Do you see that? It says L5?

10 A Yes.

11 Q Does that correspond to, in Exhibit 20, the
12 L5 under the "License No." column?

13 A My license number, this is my image
14 number -- when I say "this," I mean -- is this 21
15 here? Oh, this is 19 and this is 20.

16 Okay. So repeat your question.

17 Q Sure. I'm looking at Exhibit 19. The
18 column that says "License No." at the top.

19 Do you see that?

20 A Yes.

21 Q And do you see the first entry is L5?

22 A Yes.

23 Q Now, keep your finger on that and look over
24 at Exhibit 20.

25 Do you have Exhibit 20 in front of you --

1 A I do.

2 Q -- first page of 273?

3 A Yeah.

4 Q Do you see where it says "L5" in the fifth
5 row of -- of entries?

6 A Yes.

7 Q Right there?

8 A Yeah.

9 Q Does the L5 in Exhibit 19 correspond with
10 the L5 in Exhibit 20?

11 A Yes. Exhibit 20 is -- is indexed by the
12 license number. Exhibit 19 is the same information
13 but indexed by the image number --

14 Q Understood.

15 A -- for ease of reference.

16 Q Understood.

17 Now let's keep going on Exhibit 19. The
18 fourth column, where it says "Usage No." --

19 A Yes.

20 Q -- and you have some codes there, U06,
21 U104 --

22 A Yes.

23 Q -- et cetera, do you see that?

24 A Yes.

25 Q What does U06 mean and where does that come

1 from?

2 A "Table of Usages," F, and that is explained
3 in the body of my report.

4 Q So take a look at Exhibit 23, please.

5 A 21, 22 -- 23.

6 Q Looking at 23 --

7 A Just going to put these in order here; so
8 be easier. 19, 20 -- 23. Okay.

9 Q So if we look at 23, and we see under the
10 Usage No. U06 in the sixth row, that corresponds
11 with it?

12 A Correct. This is an index, it's a list of
13 all the usages -- which are not licenses; they're
14 instances of use -- index by usage number.

15 Q Got it.

16 Now, referring back again to 19 -- and you
17 can put 23 away. So why don't you put that back in
18 the folder so we don't mix it up.

19 Go back to -- to 19.

20 A Okay.

21 Q The fifth column, where it says "License
22 Type No."

23 Do you see that?

24 A Yes.

25 Q It says "T1"?

1 A Yeah.

2 Q What does the T1 mean?

3 A Well, normally in these cases we have more
4 than one type of license. In other words, there
5 might be usage in social media, usage in a textbook,
6 usage in an ad. And I'll have a separate table just
7 for the license types. There might be T1 through
8 T50, different types of licenses.

9 In this case we didn't include a separate
10 table of license types because we only have one
11 license type. So, to answer your question, that's
12 just -- the license type for all these is the same.
13 We didn't actually need this column, but we left it
14 in there so that's consistent with the way we
15 normally do it.

16 Q Understood.

17 The next column has a heading that says
18 "License Type Code."

19 Do you see that?

20 A Yes.

21 Q What are those codes? What do they mean?

22 A That is just an abbreviation. You can see
23 to the right, the license type description. You can
24 see the relationship, I think, if you look at the
25 license type code and the license type description.

1 It's really more for internal reference so
2 that when I'm going back to this, if I'm up on the
3 stand and need to consult back with my table, I'll
4 be able to see it in shorthand.

5 Q Understood.

6 So that's something that you came up with?

7 A Right.

8 Q Fair enough. You can put those exhibits
9 away.

10 A I'm doing that wrong.

11 Q You can just put them aside; we'll fix them
12 later.

13 A Okay.

14 Q Take a look at Exhibit 21, please.

15 A Okey-doke.

16 Q Now, if you look at page 1 of 2 in
17 Exhibit 21 -- and do you see the file names?

18 A Yes.

19 Q Where do those file names come from? Where
20 did you get those?

21 A This comes from Gobble -- give me one
22 moment to find my assumptions so I can make sure
23 that it does, in fact, come from Gobble.

24 Q And while you're -- before you look at
25 that, let me just --

1 A Yes.

2 Q -- show you one thing.

3 If you look at the far right-hand column of
4 Exhibit 21, where it says "copyright registration
5 Nos." --

6 A Yes.

7 Q -- do you see those?

8 A Yes.

9 Q Are these the file names within the
10 copyright registrations? That's what --

11 A In order to answer that, I kind of need to
12 look at --

13 Q Go ahead.

14 A Finish that sentence, I need to look at --
15 I'm looking at Exhibit 8, page 11, Assumption J.

16 So I believe that these file names are --
17 they're definitely not set by me, and I don't know
18 that there's a relationship between them and the
19 copyright registrations. They serve to identify the
20 files that were given to us in order to create the
21 table -- the visual index of photographs in -- which
22 is Exhibit C.

23 And so they could be the same -- they could
24 be a constant, in other words, used within Brittney
25 Gobble Photography as the name of the image, or not.

1 For us, it's an identifier to match it to the
2 collection of images and know what images --
3 visually what -- what they're talking about.

4 Q Do you recall seeing those file names
5 anywhere else?

6 A So, in the back of my head, after this long
7 day, I recall seeing them on -- some of them on the
8 Sinclair sites possibly, but I'm not absolutely
9 sure. I recall seeing file names there that were
10 similar, but I don't know if they are these exact
11 file names. In other words, I don't know if they
12 were changed.

13 Q Understood.

14 Why don't you go ahead and get Exhibit 8 in
15 front of you, please.

16 A Okay.

17 22 --

18 Q And it's your -- your report.

19 A Oh.

20 Okay.

21 Q You've mentioned scarcity earlier today,
22 and I want to try to understand what the cutoff is
23 for when an image is scarce and when it's not.

24 How many copies of an image or how many
25 different types of an image are necessary before an

1 image is no longer scarce?

2 A Are you having me refer to my report for
3 that question? Or --

4 Q Well, you have discussions in your report
5 about scarcity, and there's an assumption in
6 Assumption N about the images being rare and scarce.

7 A Yeah.

8 Q So I wanted you to have that in front of
9 you in case you need to refer to it --

10 A Okay.

11 Q -- but I don't need you to refer to it if
12 you don't.

13 My question to you is where is the cutoff
14 between an image being scarce and not scarce?

15 A I don't know if there's a precise cutoff,
16 but where the demand or need is there for an image
17 or images and there are few images to choose from,
18 then the image would be scarce.

19 And if there's only one image to choose
20 from and you need -- if there's only ten images to
21 choose from and you need ten images, it's still
22 scarce.

23 I don't -- I'm not sure exactly how to
24 answer your question.

25 Q Well, if someone wanted to understand why

1 you declare an image scarce, what factors are you
2 looking at to decide whether the image is scarce?

3 A Well -- okay. So there's two -- there's
4 two concepts here; there's rarity and scarcity. And
5 they're related but not the same.

6 Scarcity would mean that there's not enough
7 images to satisfy demand, and rarity would be that
8 there are -- that the occurrences of that image
9 are -- how do I redefine -- or define "rarity"?
10 Let's see here.

11 Scarcity is when there are not enough
12 images to satisfy the demand, and rarity is when
13 there are -- that you would seldom encounter -- when
14 it's unusual to come across the images. And that
15 can affect pricing as well.

16 That was a bit all over the place. Rarity
17 does not assume demand.

18 Q So what's the cutoff between an image being
19 rare and not rare?

20 A Or scarce and not scarce?

21 Q I'm talking about rarity now.

22 A Oh.

23 Q You just said they're different concepts.

24 A Well, they're very similar.

25 Q You just testified that they were slightly

1 different concepts; correct?

2 A Right. But you would seldom come across
3 it.

4 And then scarcity, I believe, considers
5 demand. Such as when there's not enough wheat to go
6 around or not enough water to go around, not enough
7 gas to go around, you don't say the gas is rare.

8 Q Let's talk about rarity for a second.

9 Okay?

10 A Yeah.

11 Q I want to focus on that and not scarcity.

12 When is it that an image is no longer rare?
13 In other words, what -- how many -- how many
14 images -- how many different copies or different
15 versions of the image have to exist before it's no
16 longer considered rare?

17 A That's a good question, and I think -- I
18 think it's somewhat of a subjective -- the answer is
19 somewhat subjective because it's -- it's a relative
20 question.

21 An image is -- even the word "rare" itself
22 implies comparison to other assets that are more
23 plentiful in order for something to be rare. So I
24 don't -- I don't really have a number for you.
25 You're asking me for a number in the image

1 marketplace.

2 Scarcity, on the other hand, if you need --

3 Q Hold on. We're not -- hold on to scarcity.

4 We're going to get there in a minute.

5 A Yeah.

6 Q Just want to focus on rare.

7 A Okay.

8 Q Can you give me a range when you would
9 consider an image starts to -- to no longer be rare?

10 A I can't really give you a range.

11 Q Now, with respect to scarcity, you
12 indicated that scarcity takes into consideration
13 rarity as well as demand.

14 Is that -- did I understand you correctly?

15 A Did I actually say "rarity" in that
16 sentence? I think I -- I said it takes into account
17 the demand, but I think it would take into account
18 rarity.

19 So would scarcity -- how many images do you
20 need of that particular subject matter and how many
21 are available?

22 Q And because demand is one of the factors to
23 determine scarcity, is it fair to say that when
24 deciding whether an image is scarce, you have to
25 look at both the supply of the image as well as the

1 demand of the image? Excuse me, the demand for the
2 image?

3 A Well, the demand for the image in scenarios
4 like this has to be assumed because there is a party
5 who desires to make use of one or more images. So
6 we're not talking about overall market demand; we're
7 talking about a particular instance of demand and
8 is -- are there -- is there a sufficient quantity of
9 images to -- of images that meet the criteria that
10 are sufficient to satisfy that demand.

11 Q Well, let's assume there are ten versions
12 of a particular subject but there is a demand for
13 only one of them.

14 Would you agree that because the demand is
15 low that that image or that -- the subject of that
16 image would not be scarce because there would be an
17 adequate number of images to satisfy the demand?

18 A Can't say yes to that. Because we're not
19 dealing with, you know, nails or bolts or washers in
20 a bin in a store here; we're dealing with images.

21 And companies, individuals who have a need
22 for images are going to have their own aesthetic
23 criteria and criteria pertaining to the content in
24 order to determine if those images -- which of those
25 images meet their needs.

1 Q Well, assume that there are ten versions of
2 a particular kind of image that meet the needs of
3 the one person who is interested in purchasing a
4 license for that type of image.

5 Would you agree that in that situation the
6 images were not scarce?

7 A In a situation in which that person -- in
8 this hypothetical, that person looking at those ten
9 images would be of a frame of mind -- I'm just
10 verifying your hypothetical -- be of a frame of mind
11 that every one of those ten images is perfect for
12 their needs?

13 Q Yes.

14 A Then the images are relatively scarce
15 because there's only ten images that exist.

16 Q But if they only need one, then there is a
17 sufficient quantity to meet their demand, isn't
18 there?

19 A Yes. But they don't have hundreds or
20 thousands or tens of thousands to choose from, as
21 you might have if you search the word "love" on
22 Getty Images.

23 Q Well, maybe -- maybe I'm not following you.
24 How do you define scarcity?

25 A Well, there's a relative aspect to that

1 term, where images are -- some images are more
2 scarce or -- than others because there are fewer
3 images that meet the criteria.

4 You said there's ten total images that meet
5 the criteria, and I gave you an example back of a
6 search of the word "love" versus a search of the
7 word "Lykoi."

8 Q Where did you get your definition of
9 scarcity that you used in your methodology today --
10 in this case for today?

11 A I didn't get that anywhere. It is my
12 understanding of scarcity as it applies in the image
13 licensing marketplace.

14 Q Did you obtain that definition from any
15 book, treatise, or publication?

16 A I don't believe that we defined that. I
17 mean, my organization is the organization that
18 defines terms like that. I don't think that we have
19 a definition for scarcity.

20 Q Is Brittney Gobble a professional
21 photographer?

22 A If you asked me that question 20 years ago,
23 I would say no, very quickly, have a very short
24 answer for you. I would have said 20 years ago that
25 a professional photographer makes their living or a

1 significant portion of their living from generating
2 revenue from the licensing or sale of their
3 photography. It's been my lifetime definition of
4 professional photographer.

5 But as our industry has morphed, there are
6 many photographers who do photography for a living
7 and yet make no money whatsoever at it, and they
8 work -- they either lose money or they perform or
9 license for -- in exchange for kind of a barter
10 arrangement or in-kind -- in-kind consideration.

11 So the industry is in a bit of turmoil, my
12 profession, like many other professions, to where
13 anybody can call themselves a professional
14 photographer, and I can't argue with them anymore.

15 Q Do you consider Brittney Gobble a
16 professional photographer?

17 A Yeah. I have a tough time with that
18 question.

19 Q Choose whatever definition you want for
20 professional photographer that you're comfortable
21 with.

22 Do you consider Brittney Gobble a
23 professional photographer?

24 A Under the most common definition -- or not
25 definition -- most common understood meaning of that

1 term today, I would have to say yes.

2 Under my -- my personal understanding
3 historically, no, but that doesn't apply today.

4 Q So what is that current definition that you
5 are applying to say that you think today she is a
6 professional photographer?

7 A Well, a couple things. Her images are of a
8 creative and technical quality that surpass 60 to
9 70 percent of the professionals who earn their
10 living as photographers. I mean, I'm just throwing
11 that out there in my experience. It's a high
12 quality -- high-quality results, and I don't
13 understand how she developed that level of
14 expertise.

15 She's testified that she learned it all
16 herself and went to a few PPA events, Professional
17 Photographers of America, but didn't like them and
18 didn't learning anything. But she's got high-
19 quality, impactful, well-executed images with
20 lighting that is better than most professionals.

21 She, in the course of doing business,
22 licenses her images in exchange for consideration
23 that is of value to her business -- I guess you
24 could say to her husband's business or their
25 business, which is the equivalent in some respects

1 of receiving cash consideration because of the
2 promotional value of it.

3 And many of the other folks who today call
4 themselves professional photographers are engaged in
5 similar pursuits. They agree to take photographs in
6 exchange for no money, but maybe they get a hotel
7 and a flight out of it, and they're licensing their
8 images in exchange for that.

9 So, despite my personal reservations as to
10 what I consider a professional photographer, the
11 marketplace has completely changed, and people
12 who -- I mean, she's a part-time professional
13 photographer, is what she is, is -- is what I can
14 say in answer to your question.

15 Q Please turn to page 32 of your report. I'm
16 going to refer you to the paragraph immediately
17 above P.

18 Do you see that? Starts with "Based on my
19 knowledge and experience"?

20 A Yes.

21 Q And then the sentence continues on (as
22 read):

23 And based on my review of
24 hundreds of instances of
25 publications of photographs by

1 WENN's customers and defendants.

2 Do you see that?

3 A Yes.

4 Q I want to talk for a little bit about what
5 review you did of instances of publication of WENN's
6 photographs by persons or entities other than the
7 defendants in this case.

8 Explain to us exactly what images you
9 reviewed that were published by persons or entities
10 other than defendants that came from WENN?

11 A Okay. It's a multifaceted answer. Again,
12 it seems to you like a simple question, but --

13 Q Please, you have the floor.

14 A All right. So WENN's customers included
15 stock agencies who then relisted the photographs,
16 offered them for sale, as I recall -- and this is
17 back in 2017 that I was looking at this.

18 And so I went to those websites. I went --
19 and I reviewed whatever was produced by the parties
20 in the matter. And certainly there were hundreds of
21 instance of use by Sinclair in that documentation.

22 Q I don't want to talk about the uses by
23 Sinclair. I'm asking about entities or persons
24 other than Sinclair that you reviewed.

25 A Well, at the time that I wrote this, many

1 of those entities were not defendants. That's the
2 other facet of this question. Right?

3 Q Well, let me ask you this --

4 A So they were WENN's customers, but they
5 were not yet defendants.

6 Q All right. You know that there are fairly
7 large number of defendants in this case now?

8 A Yes.

9 Q Did you review instances of publications of
10 photographs obtained from WENN by anybody else other
11 than one of the defendants in this case?

12 A I just answered that. I said I went to
13 whatever website was offering up the photographs.
14 I'm fairly certain. It was in 2017, but I'm fairly
15 certain I did that.

16 Q Please take a look at your table of
17 documents that you reviewed or relied on in
18 preparing your report.

19 A Index to exhibits --

20 Q Can you give me the index to exhibits,
21 please.

22 A Thanks. Making a diligent effort here.
23 Maybe it got stuck back into one of those folders.

24 Q Well, maybe I did not mark it. Let me pull
25 it out.

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1 Let's mark this, please, as Exhibit -- your
2 Exhibit B, Mr. Sedlik.

3 (Whereupon, Defendants' Exhibit 24
4 was marked for identification by the
5 Court Reporter.)

6 BY MR. MARDER:

7 Q I'm showing you what's been marked as
8 Exhibit 24 to your deposition, which is your
9 Exhibit B to your report.

10 Please show me in here where it shows that
11 you considered the materials that you just testified
12 about, the websites you just testified about.

13 A Might be on Exhibit 24, page 2 of 3,
14 halfway down the page, list of websites there.

15 Dailymail.co.uk, I don't think that's a
16 Sinclair site. Or Refinery29 or -- I don't know if
17 that says MagCloud. And then --

18 Q Let me just stop you there for a second.

19 You just identified a number of websites.

20 Is it your testimony those may have been
21 where you -- where you found these images that stock
22 photo companies bought from WENN? Or that you know
23 that those were --

24 A Stock companies bought from WENN? Let me
25 go back to the paragraph you were asking me about.

1 Your question didn't pertain to stock
2 companies.

3 Q Well, you testified that there were stock
4 photo companies that bought images from WENN;
5 correct?

6 A Yes. But --

7 Q And then you said you went to those
8 websites; correct?

9 A Yes.

10 Q Okay. Show me where in your list of
11 materials considered you have identified the
12 websites that you found those -- those WENN images
13 on?

14 A I mean, I don't -- I don't have those
15 tagged here 'cause I didn't anticipate having to
16 track that. But I do recall from two years ago
17 finding either on the sites themselves or on
18 archive.org in the Wayback Machine -- I'm looking to
19 see if I have archive.org in this list, but just got
20 to run through.

21 I would also say, further answer to your
22 question, but not stock agency, would be Cats
23 Paradise and Parimatch [phonetic], neither of which
24 are Sinclair entities.

25 Q And you found WENN images on those

1 websites, you're testifying?

2 A Yeah. I believe we actually extracted
3 metadata from those at the request of
4 Mr. Quisenberry -- Quisenberry.

5 Q Where is that metadata in your documents?

6 A I wasn't asked to testify on metadata.

7 Q Well, you just testified that you reviewed
8 WENN images from stock photo companies, and that
9 that was part of what you considered in evaluating
10 this case.

11 And then you've also testified that
12 Mr. Quisenberry asked you to extract some metadata
13 from those websites.

14 A Yes.

15 Q So that's part of your work in this case.
16 So where is that metadata?

17 A Or viewed the metadata, or what have you,
18 just look at the metadata. I don't -- I don't
19 recall what -- what actual work was done there.

20 But I'm just looking through to see if
21 agents -- archive.org is one of these websites
22 that's listed.

23 Well, yeah, that these -- these websites
24 were produced by the parties, by Brittney Gobble
25 with her pictures on them.

1 Q I'm not asking about Brittany's pictures.
2 I'm asking about your statement that stock photo
3 companies purchased images from WENN.

4 Do you recall saying that today?

5 A I don't know that they purchased images
6 from WENN. They obtained Brittany's images from
7 WENN and posted them on their sites for sale. I saw
8 this.

9 Q All right. So now I want to make sure
10 we're clear.

11 In your work in this case, did you find any
12 stock photo companies that obtained images from WENN
13 that were not produced by Brittney Gobble?

14 A I --

15 MR. ALLEN: Objection. Form.

16 BY MR. MARDER:

17 Q You can answer.

18 A And now you added another dimension to it.
19 Not to my knowledge, when you add "not produced by
20 Brittney Gobble." Because I recall that one of her
21 complaints was that the images were being resold by
22 WENN customers, some of which are stock photo
23 agencies.

24 Q And how do you know -- other than what
25 Brittany said, how do you know that stock photo

1 companies obtained images from WENN that were
2 created by Brittney Gobble?

3 A I believe that I saw it amongst the
4 production and then either visited the site or
5 relied on what was produced. But because it's been
6 two years, I don't recall which.

7 Q In your report on page 28, you say that (as
8 read):

9 BGP experimented with licensing
10 through a stock photography agency,
11 Rex Features.

12 Do you see that? It's the second paragraph
13 on page 28 of your report.

14 A Yes.

15 Q When you say that BGP "experimented with
16 licensing," what did you review to conclude that she
17 was experimenting with licensing through Rex?

18 A I reviewed the documents and materials
19 produced that were relevant to that topic, and I --
20 well, there it is. There's a footnote that answers
21 your question.

22 And then, in my discussion with Ms. Gobble
23 and in her -- well, her testimony was more recent.
24 Let me just think back.

25 I recall her saying that -- and I can't

1 recall where I read this, but that she was
2 dissatisfied with both the licensing practice of Rex
3 and the fact that they could not and did not satisfy
4 her licensing conditions, and that she did not like
5 the licensing model that they operated under.

6 So she -- at first, as I recall from
7 memory, she gave them some images; did not ever sign
8 a contract with them, their contributor agreement,
9 only filled out a registration form in order to
10 receive payment many months after she first provided
11 the images. And when she first provided the images,
12 she didn't fully understand that they were going to
13 proceed to license them, and she didn't really
14 understand the model that they were going to license
15 them under.

16 And she received a series of statements and
17 then a request that she sign an agreement months
18 later. This whole thing happened over about
19 15 months total. And at that point she told them to
20 take her images down. She terminated -- even though
21 there wasn't an agreement, she terminated the
22 relationship. And that was her experimentation with
23 using a stock agency, and she hated it.

24 Q Did she use the word "experimented"?

25 A She may have, but that's how she

1 categorized it.

2 Q Well, I'm not asking you to characterize
3 her testimony. I want to know her specific words.

4 A She did not -- my answer would no, she did
5 not use the word "experimented." She definitely
6 terminated after trying -- after trying it for the
7 first time for a brief period of 15 months
8 approximately, less months if you consider when she
9 signed her -- when she filled out that registration
10 form.

11 She terminated it because she did not want
12 to license in that manner or -- and she didn't want
13 anybody to license her work in that manner.

14 Q Are there any documents that use the word
15 "experimented" when describing her venture with Rex
16 Features?

17 A No. It's my opinion that she experimented
18 based on her description of that relationship and
19 the brief time that she was engaged with them, which
20 is quite unusual in the stock industry.

21 Q You say further in that sentence on page 28
22 of your report that (as read):

23 She terminated BGP's agreement
24 with Rex after a brief test period
25 after Rex offered BGP's photographs

1 at rates below market values.

2 Do you see that?

3 A Yes.

4 Q Is it your testimony that the reason that
5 she terminated the agreement with Rex was that Rex
6 was offering her photographs at rates below market
7 value?

8 A Yes. Because even though she offered her
9 images for use at no licensing fee, she was
10 bartering for the consideration that she received in
11 exchange and had control over the type of use and
12 the conditions and -- the conditions of use for her
13 specific goals for her business.

14 Q Rex was paying her money to license her
15 images, weren't they?

16 A Yes. But she wasn't receiving the same
17 level of consideration that she did when she was
18 offering the images in exchange for the promotional
19 value. So money and the promotional value for her
20 breeding business are equivalent.

21 Q Well, we'll talk about nonmonetary
22 consideration. In other words, I want to talk right
23 now about dollars paid -- or pounds, in that case --
24 paid to Brittany Gobble by Rex.

25 You would agree that Rex Features paid

1 money to Brittney Gobble for the right to license
2 her photographs?

3 A In a roundabout way. They paid her a
4 royalty resulting from their -- their -- their sales
5 of licenses of her photographs. And she did not
6 agree with that royalty level after considering that
7 she was not receiving the -- those who were using
8 the images under those licenses did not provide her
9 with benefits commensurate with the rights that they
10 were receiving and the rates that they were paying.

11 Q Did she say to you that she did not agree
12 with that royalty level?

13 A Yes. And she's testified in that regard as
14 well.

15 Q And when you say "royalty level," you're
16 including the cash paid to her as well as other
17 compensation that you've previously testified to?

18 A What's the other compensation that she got
19 out of the Rex licenses?

20 Q I don't know. You tell me. You were
21 referring to credit and driving business to the cat
22 business or something like that earlier.

23 A Right. And her licensing practice in
24 direct licensing was to offer up her licenses of her
25 images in exchange for -- I mean, these were

1 basically licenses subject to conditions: You must
2 credit her; you must make this statement in the --
3 in text associated with the photographs; you must
4 make that statement in text associated with the
5 photographs; you may not make this other statement
6 in association with the photographs, very much
7 unlike a royalty-free license.

8 And so I don't know how -- how better to
9 explain it.

10 Q Simply because a licensor sets a particular
11 rate for the license, does that necessarily mean
12 that somebody is going to pay that amount for that
13 license?

14 A No. I mean, depends on the extent of the
15 licensee's need for those images.

16 Q Does it also depend on whether the proposed
17 license fee sought by the licensor is reasonable?

18 A It assumes a willingness to engage in the
19 transaction.

20 Q And included in that is consideration of
21 whether the license fee sought by the licensor is
22 reasonable to the licensee; correct?

23 A Whether they may -- may be reasonably
24 required to pay that amount by the licensor is the
25 standard, in your own cite.

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1 Q Well, reasonably required, where does that
2 come from?

3 A Well, originally, looking back, it comes
4 from the HR Pufnstuf case, and then was quoted in --
5 I mean, was cited in an intermediate music case, and
6 then was cited in Jarvis, and then was cited in the
7 Mayfield -- Mayweather case.

8 Q And underlying those decisions was the
9 concept that the license fee sought by the licensor
10 had to be a reasonable license fee that the market
11 would pay; correct?

12 A The willingness of the buyer is part of
13 that model.

14 Q Earlier you testified that you have done
15 personal work collecting pricing data for
16 photography licenses.

17 Do you recall that testimony?

18 A Can you give me the context of that
19 testimony? Because it's been a long day. There was
20 some testimony earlier about just collecting sample
21 prices from the stock marketplace -- marketplace
22 every year for certain images. There was testimony
23 about sitting down with groups of photographers and
24 talking about their business practices. There was
25 testimony about attendance at events in which

1 pricing trends and -- were discussed.

2 So I need a little bit of context when you
3 say "earlier today."

4 Q Earlier we were talking about your matrices
5 that were collected that inadvertently contained
6 some pricing information.

7 Do you recall that? I'm not done referring
8 you, but I want to make sure -- see if you recall
9 that area of testimony.

10 A When -- yes. When you mentioned that they
11 contained pricing information, I corrected you and
12 said they just contained percentages.

13 Q Hold on. Hold on. I just want to direct
14 you to some testimony, then I will ask questions.
15 Okay?

16 So you recall that time period of your
17 testimony?

18 A Yes.

19 Q And then I asked you about whether you
20 collected that kind of data, and I was talking about
21 while you were at -- at PLUS. And you said, "No,
22 we're not going to be doing that for another two
23 years."

24 And then I asked you, "And how about you
25 personally outside of the PLUS Coalition?"

1 A That's not accurate.

2 Q Well, let's read it. You mentioned
3 earlier -- and I'm reading the question from earlier
4 (as read):

5 You mentioned earlier that some
6 of your matrices that were collected
7 may have inadvertently contained
8 some pricing information during the
9 2006 to 2010 time period.

10 It says, "I did hear you correctly?"
11 And your answer was (as read):

12 That's incorrect. Not pricing
13 information, but percentage
14 difference. For example, between a
15 use in United States only versus use
16 in United States and Canada.

17 Percentages sitting there in
18 formulas, in spreadsheets, errantly
19 included in submissions to us, which
20 we then ignored -- although I can
21 say I looked at it, but the PLUS
22 Coalition ignored.

23 And I did note in looking at
24 that information that across all of
25 the stock agencies, it appears that

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1 they're all copying from each other
2 or all copying from the market
3 leader, because these percentages,
4 like 46.5 percent between "x" number
5 of years and "x" number of years,
6 were identical in the submissions
7 given to us.

8 Now, in my capacity as the PLUS
9 Coalition president and CEO, I did
10 nothing with that will [sic]
11 information, other than to observe
12 it and to learn from it about
13 industry practice.

14 I would doubt that there are
15 many other people who have seen the
16 licensing matrices for multiple
17 stock photography agencies all in
18 one place.

19 My next question (as read):

20 Since 2006 to 2010 period, have
21 you collected any of that type of
22 data?

23 Answer: No. We're not going to
24 be doing that for another two years.

25 Question: How about you

1 personally outside of the PLUS
2 Coalition?

3 Answer: Oh, I collect all kinds
4 of data all the time about pricing
5 and licensing, and I have many
6 activities outside of the PLUS
7 Coalition.

8 So when you said, "Oh, I collect all kinds
9 of data all the time about pricing and licensing,"
10 that's what I want to focus on now.

11 A The beginning -- before you went to that,
12 you had a question about what -- what did I mean
13 that I would be going back to it in two years.

14 Q Don't worry about that. That's earlier.
15 I'm asking a different question.

16 A I don't want -- I don't want to -- I asked
17 you to clarify that question and I don't want to let
18 that lie.

19 Can you -- I mean, I guess you can make me
20 let it lie, but I have -- I need to clarify it.

21 Q Go ahead.

22 A So we wouldn't be looking at pricing
23 information in two years; we would be putting out a
24 second version of our standards, which involves
25 revising the matrices so that they are current with

1 current industry practice, which has drastically
2 changed.

3 So there's no percentages in there; there's
4 no pricing in there. That's PLUS Coalition work. I
5 just want to be clear about that, it wasn't me
6 personally. The second part was me personally.

7 Q Yeah, I appreciate you clarifying that
8 because I want to make sure that everything in here
9 is accurate.

10 But now I want to focus on something
11 different than that. I want to focus on your
12 statement earlier where you said, "Oh, I collect all
13 kinds of data all the time about pricing and
14 licensing."

15 What type of information do you collect
16 about pricing and licensing?

17 A So I think in that testimony I was
18 referring to both collecting pricing information
19 from the stock photo agencies, as you've seen that I
20 have done and as I've testified that I have done, as
21 well as the discussions with groups of photographers
22 about their pricing strategies and practices, and
23 attendance at industry events in which pricing
24 trends are discussed. And so there's three parts
25 there.

1 Q Understood.

2 A I'm not doing a formal survey, if that's
3 what your question is.

4 Q Understood. Thank you.

5 Why don't we go off the record and I'm
6 going to review my notes and we may be done or
7 almost done.

8 THE VIDEOGRAPHER: We're going off the
9 record. The time is 6:42 p.m.

10 (A recess was taken from 6:42 p.m.
11 to 6:47 p.m.)

12 THE VIDEOGRAPHER: We are now back on the
13 record. The time is 6:47 p.m.

14 BY MR. MARDER:

15 Q We mentioned Getty Images from time to time
16 today.

17 They're a stock photo agency; is that
18 correct?

19 A Yes, sir.

20 Q When Getty accepts a photographer and
21 agrees to sell their work as stock photography, does
22 Getty have any particular standards?

23 A Yes. They have a list of requirements for
24 quality of work. Of course, there's different
25 levels of that. They have their micro stock

1 division, iStock photo with different requirements,
2 but on the rights-managed side, they do have some
3 requirements.

4 Q And what are Getty Images' requirements for
5 their rights-managed side in order to list images
6 from photographers?

7 A I'm forgetting the resolution requirement,
8 but I believe that Brittney Gobble's raw files would
9 be acceptable to Getty at this stage.

10 Q I'm not asking about Brittney Gobble's
11 images. I'm talking solely about Getty and what
12 their requirements and standards are.

13 A I don't have it memorized.

14 But to answer your question, yes, they do
15 have standards. They ask you to put metadata in
16 certain fields. They have certain editorial
17 standards as well for their editorial -- editorial
18 photographs.

19 There's a whole list of requirements.

20 Q And have those changed from 2015 to now, or
21 have they generally been the same on the rights-
22 managed side?

23 A Through November 1st.

24 Q Through November 1st of this year?

25 A They periodically revise their

1 requirements, and I'm not familiar with what the
2 changes might have been along the way.

3 Q Does Getty require exclusivity?

4 A In some cases they require image
5 exclusivity.

6 Q In 2015, isn't it true that Getty required
7 image exclusivity before listing an image on their
8 rights-managed side?

9 A I think that may be true. I'm not -- I
10 can't say for -- with absolute certainty.

11 Also, I don't know the extent to which they
12 enforce that or agreed with some photographers to
13 make exceptions. But I think it's a reasonable
14 assertion.

15 Q In -- in 2015 would Getty accept an artist
16 who only presented 55 images to Getty?

17 A I suppose it depends on the images, but
18 Getty would want to see a larger selection,
19 typically.

20 Q Why is that?

21 A Because they would want artists who sign up
22 with them to submit regularly and to be familiar
23 with the system and to be efficient in their uploads
24 of, you know -- of images so that Getty could keep
25 its content fresh and new and have new images to

1 sell so that their customers aren't looking at the
2 same thing every time they come in.

3 But I can tell you that with certainty from
4 my experience, I could take 20 Phil Stern images and
5 they would accept them.

6 Q Understood.

7 A Yeah.

8 Q But you would agree that Brittney Gobble is
9 not Phil Stern?

10 A Brittney Gobble is not Phil Stern.

11 Q Does Getty Images accept images that are --
12 where the focus is soft? And by "focus soft," I
13 mean on the subject of the picture.

14 A There are examples that I have seen where
15 that subject itself is out of focus and something in
16 the background is in focus. But with that
17 exception, they like the primary subject matter to
18 be sharp, at least some portion of it. They will
19 accept very limited depth of field in an image, but
20 something should be sharp in the image.

21 Q Something, meaning not necessarily a beer
22 can in the background but the subject of the
23 photograph?

24 A The subject of the photograph, yeah. But
25 you have to understand that aesthetically there has

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1 been a trend to have subject soft in the foreground
2 and the background sharp, like might be a row of
3 poplar trees or something.

4 Q Fair enough.

5 A Those would be exceptions.

6 Q That would be an artistic shot?

7 A That would be.

8 Q Now, does Getty Image accept pictures where
9 the subject's skin has blown highlights?

10 A I would say that where that is intentional,
11 yes. There are certain types of photographs that
12 are done in high key with beauty light where they
13 will accept blown-out highlights. Not to the point
14 where it creates digital artifacts, but where it's
15 aesthetically pleasing.

16 They would not accept accidentally blown
17 highlights that cause weird shapes to appear in the
18 background or gradation interruptions with lines in
19 the background from poorly processed images, things
20 like that.

21 Q Or loss of texture, for instance, on skin
22 because of blown highlights?

23 A Sometimes that's an aesthetic choice.

24 Q Well -- and I'm not talking about high-key
25 images. I should say other than high-key images

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1 where that is intentionally the aesthetic of the
2 image.

3 A That is essentially my answer, is where it
4 is -- where it serves an aesthetic purpose, they --
5 those are situations in which they would likely
6 accept it, if it's a successful image. But if it's
7 an accident, technical error, then they may reject
8 the image.

9 Q Now, you've testified earlier that you've
10 done some workshops at times and done some teaching
11 about photography and composition and things of that
12 nature.

13 And have you ever taught photographers to
14 be aware of the background of their images before
15 they shoot the subject?

16 A Yes.

17 Q And one of the things that you teach
18 photographers is, for instance, to make sure there
19 isn't a light pole sticking out of the head of a
20 subject of a photograph or a tree?

21 A It's a sore subject with me, because people
22 of a certain age that's about 30 years younger than
23 me tend to like that -- that happenstance and those
24 strange compositional choices because it makes the
25 image look more con- -- not contemporaneous, but --

1 Q Spontaneous?

2 A -- more real and less planned. And my
3 personal style as a photographer is very planned and
4 controlled.

5 You know, my daughter who is on the way to
6 being a professional photographer would have the
7 opposite view, and I can't teach her otherwise. And
8 some of my students who are also of that age, and
9 I'm talking about 19, 20, 21, they like all kinds of
10 strange things happening in their compositions, and
11 I get shredded if I criticize them for that.

12 Whereas 20 years ago I could get away with
13 it, with that kind of advice or calling them on it
14 or grading them down on it...

15 THE REPORTER: Or calling --

16 THE WITNESS: Or calling them on it or
17 grading them down on it.

18 MR. MARDER: Let's go off the record for
19 one second.

20 THE VIDEOGRAPHER: We're going off the
21 record. The time is 6:56 p.m.

22 (A recess was taken from 6:56 p.m.
23 to 7:00 p.m.)

24 THE VIDEOGRAPHER: We're now back on the
25 record. The time is 7:00 p.m.

1 MR. MARDER: Mr. Sedlik, thank you for your
2 time. I have no further questions.

3 THE WITNESS: You're welcome, sir.
4 I would like to read and sign.

5 MR. MARDER: Thank you.
6 Any questions, Rob?

7 MR. ALLEN: No questions at this time.

8 MR. MARDER: We're done. Thanks.

9 THE VIDEOGRAPHER: This concludes today's
10 testimony given by Jeffrey Sedlik. The number of
11 media units used was one. It will be retained by
12 Veritext.

13 The time is 7:01 p.m. We're now off the
14 record.

15 (Off video record.)

16 THE REPORTER: Do you guys need a rough
17 draft?

18 MR. MARDER: I'll take a rough.

19 MR. ALLEN: If he's going to take a rough,
20 I'll take a rough.

21 (The deposition ended at 7:02 p.m.)

22 -000-

23

24

25

1 STATE OF CALIFORNIA)
2 COUNTY OF RIVERSIDE) ss.

3
4 I, Paula A. Pyburn, CSR No. 7304, RPR, CLR, in
5 and for the State of California, do hereby certify:

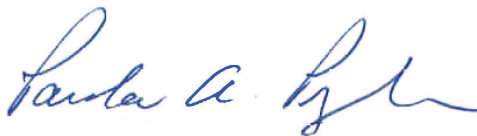
6 I am the deposition officer that
7 stenographically recorded the testimony in the
8 foregoing deposition;

9 Prior to being examined the deponent was first
10 duly sworn by me;

11 The foregoing transcript is a true record of the
12 testimony given.

13 Before completion of the deposition, review of
14 the transcript [xx] was [] was not requested. If
15 requested, any changes made by the deponent (and
16 provided to the reporter) during the period allowed
17 are appended hereto.

18
19 Dated December 2, 2019

20
21 
22

Paula A. Pyburn, RPR, CLR

23 CSR No. 7304

Certified Shorthand

24 Reporter for the

State of California

Robert Allen, Esquire

rallen@glaserweil.com

December 2, 2019

RE: Brittney Gobble Photographer v. Sinclair Broadcast Group

11/13/2019, Jeffrey Sedlik , Expert (#3621210)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at cs-midatlantic@veritext.com

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,

Veritext Legal Solutions

Brittney Gobble Photographer, LLC v. Sinclair Broadcast Group

Jeffrey Sedlik , Expert (#3621210)

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Jeffrey Sedlik , Expert

Date

Brittney Gobble Photographer, LLC v. Sinclair Broadcast Group

Jeffrey Sedlik , Expert (#3621210)

ACKNOWLEDGEMENT OF DEPONENT

I, Jeffrey Sedlik , Expert, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

Jeffrey Sedlik , Expert

Date

*If notary is required

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State of Rhode Island District Court

Civil Rules of Procedure

Chapter V. Deposition Discovery

Rule 30

(e) Review by Witness; Changes; Signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in the form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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